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DEPARTMENT OF THE NAVY

CLEMENCY AND PAROLE

MANUAL



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Table of Issuances and Revisions/Changes

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List of Revisions/Changes

The following list outlines administrative and other minor corrections that have been incorporated into this manual.

1. Reordered paragraphs throughout to ensure roles, responsibilities, and jurisdiction are defined in a logical, streamlined, sequential manner.
2. Removed all references to electronic data systems such as Corrections Management Information System and Total Records and Information Management to ensure the instruction remains accurate even if the systems are no longer used.
3. Updated Forms required provided in Appendix A.
4. Definitions moved to Appendix B, making the old Chapter 2 the new Chapter 1.
5. Eliminated paragraph 2j of Chapter 2 (no longer requirement to submit semi annual and annual reports to SECNAV/SECDEF, respectively).
6. Added paragraph 5 to Chapter 2, detailing responsibilities of the Presiding Officer.
7. Added statement in paragraph 12 of Chapter 2 that NC&PB proceedings are closed to the public.
8. Simplified records management and retention requirements in paragraph 18 of Chapter 2.
9. In paragraph 3 of Chapter 3, clarified mandatory clemency review requirement for offenders who are adjudged 12 months or more in confinement but who have a pretrial agreement for 12 months or less confinement.
10. Clarified mandatory and requested clemency review requirements in paragraphs 4 and 5 of Chapter 3.
11. Removed references in paragraph 4 of Chapter 3 to specific forms required for clemency for prisoners held in Military Confinement Facilities (MCFs) as these are covered in MCF orders and regulations.

12. Clarified requirement for the advisement of clemency options in Chapter 3.
13. Removed paragraph 12c of Chapter 3 discussing "separate and distinct" misconduct as it is self-explanatory.
14. Removed paragraph 3c (1) and (2) of Chapter 4 regarding the U.S. Parole Commission as unnecessary.
15. Removed paragraph 3(4) of Chapter 4 regarding the notification of victims on the status of offenders as this does not fall under the purview of the Naval Clemency and Parole Board (NC&PB).
16. Removed statement regarding suggestions for a prisoner to solicit their corrections counselor for suggestions/other options as this falls under the purview of MCF specific policies and procedures.
17. Removed old Appendices B, E and F (Forms Used and Clemency and Parole Flow Chart Matrices).

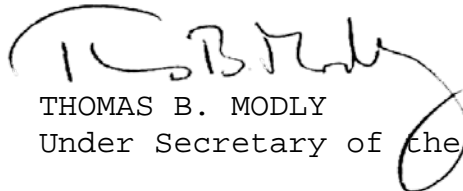
FOREWORD

This manual implements policy set forth in Secretary of the Navy Instruction 5815.3K, is issued to prescribe standards for the execution of the Naval Clemency and Parole systems, and is applicable to all commands and activities in the Department of the Navy.

Local supplements to amplify this manual may be issued and inserted as new chapters. A local supplement shall not contradict or repeat information contained in this manual.

This manual may be accessed through the Department of the Navy Issuances website <https://secnavy.navy.mil/doni>. Contact information is provided below for assistance or to offer recommended changes:

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REFERENCES

- (a) 10 U.S.C. §§801-946
- (b) 10 U.S.C. §952
- (c) 10 U.S.C. §953
- (d) 10 U.S.C. §954
- (e) 18 U.S.C. §4201ff
- (f) 42 U.S.C. §§10601, 10606, 10607
- (g) 28 CFR §§2.1-2.67
- (h) Manual for Courts-Martial, Current Edition
- (i) DoD Instruction 1325.07 of 10 April 2018
- (j) SECNAVINST 5420.135H
- (k) JAGINST 5800.7F
- (l) SECNAVINST 1640.9D
- (m) SECNAVINST 5300.28F
- (n) SECNAVINST 5800.11B
- (o) SECNAVINST 5213.16
- (p) SECNAVINST 5214.4
- (q) SECNAVINST 5211.5F
- (r) SECNAVINST 5720.42G
- (s) SECNAVINST 1752.3B
- (t) OPNAVINST 1752.1C
- (u) SECNAVINST 5430.7R

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CHAPTER 1
PROGRAM OVERVIEW

1. Purpose. This instruction implements policy and assigns responsibilities for the administration and operation of the Naval Clemency and Parole Board (NC&PB) in accordance with references (a) through (u).

2. Program Objectives. The NC&PB will be administered in such a manner to ensure the safe and appropriate release of military offenders under terms and conditions consistent with the needs of society, the rights and interests of victims, and the rehabilitation of the offender.

3. Program Policy. The naval clemency and parole system will consist of review and decision-making procedures by naval and civilian personnel, including various officers in the chain of administrative and judicial review, the NC&PB, the Director, Secretary of the Navy Council of Review Boards (SECNAVCORB), and the Assistant Secretary of the Navy Manpower Reserve and Affairs ASN(M&RA).

a. The NC&PB will review cases of offenders confined in military or, when appropriate, federal confinement facilities, who are eligible for clemency or parole, to determine whether to grant or deny such requests.

b. The NC&PB will review cases of eligible offenders for Mandatory Supervised Release (MSR) to determine whether MSR is appropriate.

4. Authority

a. 10 U.S.C. §874 states:

(1) The Secretary concerned and, when designated, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures, other than a sentence approved by the President. However, in the case of a sentence of life without eligibility for parole that is adjudged for an offense committed after October 29, 2000, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding

sentence (a) may not be delegated, and (b) may be exercised only after service of a period of confinement of not less than 20 years.

(2) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

b. 10 U.S.C. §951 states in part:

(1) The Secretary concerned shall:

(a) Provide for the education, training, rehabilitation, and welfare of offenders in a Military Correctional Facility (MCF) of their department.

(b) Provide for the organization and equipping of offenders selected for training with a view to their honorable restoration to duty or possible reenlistment.

(2) Under regulations prescribed by the Secretary concerned, the officer in command will have custody and control of offenders confined within the facility which they command, and will usefully employ those offenders as they consider best for their health and reformation, with a view to their restoration to duty, enlistment for future service, or return to civilian life as useful citizens.

c. 10 U.S.C. §952 states:

(1) The Secretary concerned may provide a system of parole for offenders who are confined in military correctional facilities and who were at the time of commission of their offenses subject to the authority of that Secretary.

(2) In a case in which parole for an offender serving a sentence of life is denied, only the President or the Secretary concerned may grant the offender parole on appeal of that denial. The authority to grant parole on appeal in such a case may not be delegated.

d. 10 U.S.C. §953 states: For offenders who were at the time of commission of their offenses subject to that authority

and who merit such action, the Secretary concerned shall establish:

(1) A system for the remission or suspension of the unexecuted part of the sentences of selected offenders.

(2) A system for restoration to duty of such offenders who have had the unexecuted part of their sentences remitted or suspended and who have not been discharged.

(3) A system for the enlistment of such offenders who have had the unexecuted part of their sentences remitted and who have been discharged.

e. 10 U.S.C. §954 states: The Secretary concerned may provide for persons who were subject to this authority at the time of commission of their offenses a system for retention of selected offenders beyond expiration of normal service obligation in order to voluntarily serve a period of probation with a view to honorable restoration to duty.

5. Program Principles

a. The general principles governing confinement of military personnel are as follows:

(1) Discipline should be administered on a corrective rather than a punitive basis, and MCFs should be administered in a uniform manner.

(2) Offenders will be afforded the opportunity to participate in programs related to education, training, and rehabilitation.

b. Naval offenders will be treated in accordance with the provisions of the Uniform Code of Military Justice (UCMJ). The major purposes of confinement are deterrence, punishment, and rehabilitation. It is also the policy of SECNAV that confined naval personnel retain all of the rights and responsibilities of other service personnel except those which are expressly, or by implication, taken away under the provisions of the UCMJ and such regulations as may be promulgated by competent authority.

c. The Department of the Navy's (DON) correctional

philosophy includes recognition of the fact that punishment alone is seldom corrective. Confinement is punishment because it denies liberty and separates offenders from their families, friends, and from engagement in most normal activities. Confinement means loss of status and disapproval by society and sharply limits the offender's privileges, freedom of action, and opportunities for personal and professional growth.

6. Other Statutes and Regulations. The NC&PB will remain informed of any programs regarding the protection of the individual and society from a reoccurrence of criminal conduct, and programs regarding the rights of and services available to crime victims. The NC&PB may also provide notice to the Secretary that it intends to comply with new treatment and rehabilitation programs for eligible offenders.

7. Delegation of Authority. Except in cases involving death penalty, life without eligibility for parole, and national security defined by reference (k), the ASN (M&RA) is delegated the authority to act for SECNAV in matters of clemency and parole.

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CHAPTER 2
THE NAVAL CLEMENCY AND PAROLE SYSTEM

1. NC&PB. A component of the SECNAVCORB designated to review, recommend, and decide clemency, parole, and MSR issues in cases of offenders who fall within its jurisdiction. A full list of related terms and definitions is provided in Appendix B. The objectives of the NC&PB are:

- a. Preservation of good order and discipline.
- b. Preservation of equality in the administration of justice, including elimination of severe sentence disparity by the remission, mitigation, or suspension of the disparate portion of the sentence.
- c. Protection of the best interests of the naval service, the individual offender, the victim, and society.

2. Mission. The NC&PB will act for or provide recommendations or advice to the ASN (M&RA) for decisions regarding the following clemency or supervised release matters:

- a. Mitigation or substitution, remission, or suspension of any part or amount of the unexecuted portion of a selected offender's sentence, other than a sentence approved by the President of the United States.
- b. Remission or substitution of a selected offender's dismissal or punitive separation and either restoration to duty or separation with an administrative discharge under either honorable conditions or under Other than Honorable conditions.
- c. Suspension of a selected offender's dismissal or punitive separation and restoration of that offender to active duty for a specified period of probation, including the retention of a selected offender beyond the expiration of their normal service obligation in order to serve a specified period of probation.
- d. Reenlistment of offenders who have satisfactorily demonstrated potential for continued military service.

e. Parole of offenders confined in MCFs serving the confinement portion of an approved sentence (or a sentence contained in Entry of Judgment for sentences adjudged on or after 1 January 2019 in accordance with the Military Justice Act of 2016) of a court-martial who were under the authority of SECNAV at the time of the commission of their offenses.

f. MSR of offenders from their minimum release date until their maximum release date.

g. Issuance of advisory opinions on any naval service case in which the offender has been transferred to the Federal Bureau of Prisons (FBOP) and is under the parole authority of the U.S. Parole Commission (USPC). Advisory opinions will be issued upon request of the USPC and in those cases in which the NC&PB finds aggravating circumstances or unique military factors present that distinguish the naval service offender's case from the "typical" case for which the USPC guidelines were established. A copy of the advisory opinion will be provided to the offender.

h. Provision of information on offender conviction/release from confinement to federal, state, or local authorities as required by law or regulation.

3. Director, SECNAVCORB Responsibilities. The SECNAVCORB Director will:

a. Exercise primary cognizance over matters relating to the clemency and parole systems within the DON.

b. Administer and supervise the activities of the NC&PB by monitoring the performance of the clemency and parole review system to ensure compliance with governing directives and to avoid delays in the processing and reviewing of individual cases.

c. Convene the NC&PB, appoint the President (GS-14/15 or senior military officer in the grade of O-5/O-6), and establish membership as prescribed in this instruction.

d. Provide administrative and clerical support for the NC&PB.

e. Inform the ASN (M&RA) of matters of interest.

f. Recommend clemency and parole policy and procedures to the ASN (M&RA).

g. Propose changes to this instruction to the ASN (M&RA).

h. Make recommendations on cases forwarded to the ASN (M&RA) by the NC&PB.

i. Selectively screen clemency and parole cases for concurrence with NC&PB determinations and forward recommendations for those cases that require final action by the ASN (M&RA) or SECNAV.

j. Ensure a complete system of records is maintained.

k. Protect the privacy of records relating to processing and reviewing clemency and parole cases in accordance with the references.

l. Ensure that NC&PB functions are administered in accordance with the appropriate directives.

m. Coordinate with the Commandant of the Marine Corps (CMC), the Commander Naval Personnel (BUPERS), the Chief, Bureau of Medicine and Surgery (BUMED) and the Judge Advocate General (JAG) as well as appropriate civilian agencies, to include the FBOP, USPC, and other federal, state and local authorities, for all matters associated with the clemency and parole of naval service offenders.

n. Take final action on cases involving the appeal of parole denials except those cases requiring SECNAV decision, or in any case where the SECNAV made the initial denial decision.

o. Ensure compliance with victims' rights, service statutes, and instructions.

p. Take all other actions necessary for the effective and efficient accomplishment of the NC&PB mission.

4. NC&PB President Responsibilities. The NC&PB president will:

a. Exercise primary cognizance for all matters pertaining to NC&PB case management and review.

b. Exercise primary responsibility for the DON's Clemency and Parole Program through planning, controlling, implementing, and administering laws, policies, regulations, directives, and instructions pertaining to clemency, parole, and MSR.

c. Maintain liaison with other departmental and service representatives responsible for clemency and parole matters and serve as the direct representative of the SECNAV at government forums and at civilian state and federal agencies including the Department of Defense (DoD) Corrections Council meetings, Navy and Marine Corps Corrections seminars, American Correctional Association seminars, the association of Parole Authorities International, FBOP, and the USPC.

d. Remain current with federal, state, and DoD regulations pertaining to clemency, parole, and MSR.

e. Direct the review of all cases within the jurisdiction of the NC&PB.

f. Conduct any special clemency reviews and forward to the Director, SECNAVCORB, or the SECNAV as appropriate for final decision.

g. Ensure the Director, SECNAVCORB, is informed of all special cases.

h. Direct special clemency reviews when appropriate.

i. Coordinate monthly board meeting location and time, and case distribution to board members.

j. Issue and distribute promulgating orders on clemency, parole, and MSR in a timely manner.

k. Ensure all cases are accurately prepared and include all the necessary documents for the board to review.

l. Maintain direct liaison with each supervisee's U.S. Probation Officer (USPO).

m. Determine whether a supervisee has violated a condition of supervision and, if so, coordinate their return to confinement and the completion of supervision violation hearing

proceedings.

n. Appoint a hearing officer to conduct supervision violation hearings and designate the time and place of the hearing.

o. Perform all other duties as may be assigned by the Director, SECNAVCORB.

p. Ensure all NC&PB generated documents are published in a timely manner for receipt by the MCF and offender, as appropriate.

5. Presiding Officer (PO) Responsibilities. The PO, NC&PB, will be a civilian employee in the grade of GS-14/15 or a senior military officer (Navy or Marine) in the grade of O-5/O-6 appointed by the President of the NC&PB or the Director of the SECNAVCORB. The PO, as senior member of the hearing, will ensure compliance with all provisions of this instruction. The PO will:

a. Protect the content of all records relating to clemency, parole, and MSR cases, and ensure review hearings are conducted in compliance with corresponding law and directives.

b. Ensure compliance with all directives regarding victim rights.

c. Ensure all case decisions are recorded accurately and that all recommendations are provided to the President, NC&PB, within three days following the completion of the board.

d. Ensure review hearings are closed. Final tally of votes from a hearing may be provided upon approval by the President, NC&PB. Individual member votes and deliberations will not be released.

e. Ensure all cases have been thoroughly reviewed by board members prior to convening a review hearing.

f. Seek guidance from the Director, SECNAVCORB, or SECNAVCORB's legal counsel in the absence of the President of the NC&PB.

6. Composition. The NC&PB will be composed of five members,

all of whom are career civil service or naval officers.

a. Nomination. Each of the following will nominate at least two officers as designated below, one as a member of the NC&PB and one or more as alternate members:

(1) CMC: Marine Corps officers.

(2) BUPERS: Navy line/staff officers.

(3) BUMED: Navy psychiatrists or clinical psychologists.

(4) JAG: Officers of the JAG Corps, Marine Judge Advocates, or senior career civil service attorneys assigned to the Office of the JAG (including Naval Civil Law Support Activity).

b. Grade of Nominees. Nominated military officers will be of the grade of O-5 or O-6. Career civil service attorneys will be of the grade of GS-14 to GS-15, with preference given to the latter. Exceptions to these grade requirements may be authorized by the Director, SECNAVCORB.

c. Oath/Affirmation. Prior to assuming their duties as members of the NC&PB, each individual will execute the oath or affirmation provided in Appendix C, administered by the Counsel to the Director SECNAVCORB, which continues in effect throughout their service with the NC&PB.

7. Functions of the NC&PB

a. Clemency. Clemency is not a right, but a discretionary decision of the NC&PB or SECNAV. The NC&PB will:

(1) Meet with such frequency as to dispose expeditiously of clemency matters referred to it for action.

(2) Conduct clemency review of cases of naval service offenders in accordance with the policy and procedures set forth in this instruction.

(3) Obtain documentation from the MCF, the Naval Criminal Investigative Service (NCIS), and/or the Federal Bureau

of Investigation (FBI) relating to any prior criminal history, including information concerning outstanding arrest warrants for the offender whose case is eligible for clemency review.

(4) Grant or deny clemency except for those cases in which SECNAV has retained the authority to take final action.

(5) Submit recommendations for final action to the ASN (M&RA) or SECNAV as required.

(6) Ensure compliance with a victim's right to information about the conviction, sentencing, imprisonment, and release of offenders throughout the clemency process.

b. Parole. Parole is not a right, but may be granted at the discretion of the NC&PB or SECNAV. The NC&PB will:

(1) Meet with such frequency as to dispose of parole matters referred to it for action in an expeditious manner.

(2) Conduct a review of cases of naval service offenders for supervision in accordance with the policy and procedures set forth in this manual.

(3) Review requests and recommendations for supervision of naval service and United States Coast Guard (USCG) offenders.

(4) Obtain documentation from NCIS and the FBI concerning any prior criminal history, including information relating to outstanding arrest warrants for an offender who is requesting parole.

(5) Grant or deny parole except in those cases in which SECNAV has retained authority to take final action.

(6) Submit recommendations for final action for all cases in which final decisional authority has been retained by the ASN (M&RA) or SECNAV.

(7) When misconduct by an offender, who was previously approved for release to supervision by the board is substantiated delay the effective date of parole or rescind parole altogether.

(8) Draft correspondence related to the suspension of parole, the conduct of supervision violation hearings, and revocation of parole, for approval of the President, NC&PB.

(9) When appropriate, suspend parole and, if necessary, direct the parolee's apprehension and return to military custody.

(10) If parole supervision is suspended and the supervisee is being held on charges by federal, state, or local authorities, request the issuance of a detainer (DD Form 553-1, Parole/MSR Violator Wanted by the Armed Forces) from Navy Personnel Command (NAVPERSCOM) (PERS-00D) for Navy and Coast Guard offenders, or the (CMC) Law Enforcement and Corrections (PSL Corrections) for Marine offenders, on the supervisee for return to military authority.

(11) Order preliminary interviews.

(12) Designate/appoint an appropriate individual or body to act as an agent of the NC&PB to conduct a supervision violation hearing when necessary.

(13) Revoke or reinstate supervision, or, revoke supervision but defer executing the revocation, cancel the deferment, or rescind the revocation.

(14) Order, if appropriate, restoration of good conduct time, earned time, or special acts abatement prior to release on supervision, if supervision is revoked.

(15) Set and modify conditions of supervision, including requirements for community service, individual or community-based counseling or therapy in substance abuse/dependency, sex offender/violent offender counseling, therapy, and treatment or any other requirement considered necessary to assist the parolee to remain at liberty and live in the community without violating the law.

(16) Issue departmental-level supervision decisions in a timely manner.

(17) Ensure compliance with a victim's right to information about the conviction, sentencing, imprisonment, and

release of offenders throughout the parole process.

c. Other Functions. The NC&PB may perform other functions as directed by higher authority. As part of those other functions, the NC&PB may:

(1) Make recommendations for the advancement of an offender's clemency or parole eligibility date in exceptional cases.

(2) Make recommendations to the Secretary, other authorities, or to the offender, regarding concerns that do not fall within the jurisdiction of the NC&PB, but may fall within the statutory or regulatory jurisdiction of other authorities (e.g., Naval Discharge Review Board, Board for Correction of Naval Records).

(3) Evaluate each case eligible for review and determine whether a violation of the law other than the offense(s) for which the offender has already been convicted has occurred. If, in the opinion of the NC&PB, a violation or potential violation is indicated, refer relevant information to appropriate law enforcement authorities in the locality to which the offender will return upon his or her release from confinement or separation from the naval service. Disclosure of this information must be consistent with federal law and should be accomplished when the offender is released from confinement or upon separation from the naval service, whichever occurs sooner.

(4) Evaluate each case for mild, moderate, or severe substance use disorder. A categorization of substance usage may be based on a medical diagnosis recorded in the record, a medical diagnosis by a psychiatrist or clinical psychologist, or by a determination of the majority of the NC&PB members. Upon making a determination an offender has a severe alcohol or drug use disorder, ensure the offender is provided the opportunity to receive inpatient Department of Veterans Affairs (VA) treatment, if available, prior to discharge.

(5) When requested, or when otherwise appropriate, provide recommendations for parole to federal parole authorities with custody and parole jurisdiction over naval service offenders serving confinement as ordered by court-martial in federal confinement facilities.

(6) Stay informed of developments and trends in corrections and military justice and remain current in military and civilian corrections issues and parole programs, legislation, and activities of professional correctional and parole organizations. Members of the NC&PB are encouraged to attend meetings of military, federal, and national corrections and parole organizations and should visit MCFs on a regular basis to ensure that policies and procedures contained here are complied with and understood.

8. Jurisdiction

a. The NC&PB has jurisdiction over all naval service members tried by Navy and Marine Corps special and general courts, and for all members who are eligible for mandatory clemency review, are eligible for and have requested clemency review, and/or are eligible for and have requested parole.

b. The NC&PB also has jurisdiction over offenders placed on MSR from their Minimum Release Date (MRD) until their adjusted maximum release date.

c. The NC&PB will ensure convening authorities promptly provide a copy of the record of trial, a copy of the promulgating order, a report of investigation, and appropriate post-trial progress reports. The NC&PB will also obtain the Convening Authority (CA) action if such was unavailable from the MCF. The NC&PB will delay processing pending the CA's action only in those cases for which the CA has the authority to modify the sentence per the UCMJ. (In accordance with the Military Justice Act of 2016, beginning 1 January 2019, the Entry of Judgment replaces the CA's action and promulgating order as the document that reflects the outcome of the court-martial. Consequently, the NC&PB will no longer be required to obtain the CA's action or promulgating order for cases adjudged on or after 1 January 2019. Instead the NC&PB will obtain the Entry of Judgment, if such was unavailable from the MCF or not included in the record of trial).

d. USCG Cases. When requested by the Commandant, USCG, the NC&PB may:

(1) Provide advisory opinions to the USCG regarding the

appropriateness of clemency as it pertains to USCG offenders serving sentences of confinement as a result of courts-martial. Clemency decisions regarding USCG offenders are the responsibility of the Commandant, USCG.

(2) Make decisions or recommendations for granting or denying supervised release in initial and subsequent reviews and on appeal, as well as suspend or revoke supervised release, of USCG offenders on the same basis and under the same conditions as are applicable to naval offenders.

9. Cases Not Within the Jurisdiction of the NC&PB

a. Cases in which no approved unexecuted portion of a sentence (or unexecuted portion of a sentence contained in an Entry of Judgment for sentences adjudged on or after 1 January 2019), other than in select cases of an executed punitive discharge or dismissal, remains to be suspended or remitted.

b. Cases in which the approved sentence (or sentence contained in an Entry of Judgment for sentences adjudged on or after 1 January 2019) does not include either a punitive separation or confinement for 12 months or more.

c. Cases in which approved suspended punitive separations (or suspended punitive separations contained in an Entry of Judgment for sentences adjudged on or after 1 January 2019) are to be executed as a result of vacation proceedings held under the Manual for Courts-Martial.

d. Cases in which offenders have an approved death sentence, unless the sentence has been officially commuted by the President to a lesser punishment.

e. Cases for offenders who are unauthorized absentees/ deserters or are in the custody of federal, state, local, or foreign authorities serving sentence of those authorities at the time they are eligible for mandatory clemency review. They become eligible for mandatory clemency review upon their return to naval custody for completion of their approved court-martial sentence (or the sentence contained in an Entry of Judgment for sentences adjudged on or after 1 January 2019).

f. Cases for offenders whose CA's action or sentence (or

conviction and sentence contained in Entry of Judgment for cases adjudged on or after 1 January 2019) has been set aside by the Navy-Marine Corps Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or other appropriate courts of law.

10. Evaluative Criteria. The offender's race, color, religion, ethnicity, national origin, sexual orientation, and gender are not evaluative factors used in determining clemency, parole, or MSR matters. Photographs of any kind will not be maintained or considered by the NC&PB. The following criteria will be considered when determining the appropriateness of clemency, parole, or mandatory supervised release:

a. The nature and circumstances of the offenses as determined from the record of trial, the promulgating order, and relevant investigative reports. In the clemency and supervised release review of an offender's case involving national security, the CA will forward the unclassified portions of the record of trial to the NC&PB together with an unclassified summary of the classified portions of the record of trial.

b. Military and civilian background of the offender, including age, education, training, and experience.

c. Post-trial progress report, to include an evaluation of the offender's post-trial attitude, conduct and performance, adaptation to confinement, sincerity and motivation, and treatment participation. The offender's post-trial denial of guilt of any or all offenses of which the offender was convicted and sentenced contrary to pleas of not guilty is not to be considered an adverse factor by the NC&PB.

d. Recommendations of the military judge and the staff judge advocate or legal officer, comments of officials in the post-trial progress report, comments of the Officer Exercising General Court-Martial Jurisdiction (OEGCMJ), and, if available, the commanding officer at the time of trial.

e. If required, a psychiatric/psychological evaluation of the offender, including relevant social factors, and, when appropriate, a substance abuse/dependency evaluation or any other specialized treatment need.

f. Statements by any Victim/Witness (V/W) related to the financial, social, psychological, and emotional harm done to the victim.

g. A statement regarding the offender's efforts to make restitution to the victim.

h. Comparison of the offense(s) and sentence with the offense(s) and sentences of co-accused and other offenders with similar convictions and sentences.

i. Recommendations of disposition boards and commanding officers.

j. Clemency previously granted by other authorities, including the presumption of good conduct time that establishes an offender's MRD.

k. The offense severity rating.

11. Exceptions. The NC&PB is authorized to make exceptions in order to:

a. Correct administrative error.

b. Allow for special consideration such as the refusal of an offender to cooperate in the preparation of a post-trial progress report, the unavailability of a post-trial progress report as a result of administrative oversight or error, or the unavailability of the offender at the time the post-trial progress report was prepared.

12. Hearings

a. The confining institution is primarily responsible for V/W notification. If a V/W expresses a desire to appear before the board, the confining institution will inform the NC&PB. The V/W will be provided the contact information for the NC&PB so they may coordinate their attendance at the hearing. In order to facilitate appropriate consideration of written material submitted by a V/W, documents will be provided to the NC&PB staff prior to the hearing.

b. The board will consider all written, audio, or video

material submitted by or on behalf of the offender. The offender also has the right to have a personal representative appear on their behalf at no cost to the government. The offender will be afforded the opportunity to sign/forward a Privacy Act Waiver/Release Form as part of the personal appearance request. The board retains the authority to determine who may be permitted to appear, to limit the time for presentations to the board, and ensure the orderly conduct of the proceedings.

c. Hearings and deliberations are closed to the general public.

d. Hearings will be conducted in a non-adversarial and impartial manner with the objective of fairly addressing all the facts bearing on a case. Members should avoid conduct that could be construed to be investigatory or prosecutorial.

e. Members will avoid conflicts of interest by recusing themselves from pending clemency/supervised release matters in which they were either indirectly or directly involved in a personal or professional capacity. If in doubt as to whether the appearance or reality of an ethical conflict of interest exists in a specific case, the member must seek an advisory opinion from the SECNAVCORB Legal Counsel.

13. Decisions and Recommendations

a. The NC&PB will make decisions and recommendations on the basis of the record of trial, the promulgating order, post-trial progress reports, and matters presented by V/Ws. Board members will also consider documents presented to the NC&PB for consideration by the offender, the offender's chain of command, and others who communicate with the NC&PB concerning the offender. Although the final decision of an individual's case can be published to appropriate authorities, the deliberations and votes of the individual members of the NC&PB are confidential and will not be released unless directed by SECNAV or the Director, SECNAVCORB.

b. The decisions and recommendations of the NC&PB will be based upon the requests and recommendations presented to the NC&PB and will include, at a minimum, consideration of the objectives, evaluative criteria, and other guidance contained

within this instruction.

c. The NC&PB will not develop conclusions as to the guilt or innocence of the offender, and will accept the findings of the offender's court-martial as approved (or as contained in an Entry of Judgment for findings adjudged on or after 1 January 2019) or affirmed at the time the offender's case is reviewed.

d. Decisions and recommendations of the NC&PB will be reached through a simple majority of the voting members. Five members will constitute a quorum. In the event of a tie vote, as the result of an abstention, the NC&PB will refer the case to SECNAV with a recommendation from the Director, SECNAVCORB. In the event that a member is unable to attend the scheduled hearing or a member has a conflict of interest, the member will arrange for their alternate to attend. If the service alternate is not available, the Director, SECNAVCORB, will designate an alternate member to participate. At the end of each board, members will sign a result of proceedings form recording their decisions and recommendations.

e. Officer and Midshipmen cases with a favorable NC&PB recommendation for clemency or parole will be forwarded to the ASN (M&RA) for final decision. Additionally, cases designated by the ASN (M&RA), Director, SECNAVCORB, or President, NC&PB, as being of special interest are also forwarded to the ASN (M&RA). In such cases, written recommendations will be submitted with pertinent portions of the case file via the Director, SECNAVCORB for endorsement. If the NC&PB is not unanimous in its recommendation, justification will be provided for each divergent opinion.

14. Post Board Actions

a. Clemency, parole, and MSR decisions will be documented in writing and distributed via encrypted electronic methods to cognizant commands, activities, and offices, including prison wardens, where appropriate. The cognizant command or authority having the most direct contact with the offender will ensure that the offender is promptly provided a copy of the action of NC&PB or SECNAV.

b. Clemency, parole, and MSR decisions will be executed promptly by cognizant commands. The authority to execute

dismissals, dishonorable discharges, bad conduct discharges, or other discharges subsequent to completion of NC&PB clemency review, however, will not be exercised until completion of judicial review of an offender's case under Article 71(a), UCMJ. (In accordance with the Military Justice Act of 2016, effective 1 January 2019, judicial review of an offender's case will fall under Article 57 of the UCMJ).

15. Time-Limitations. Time limitations stipulated in this instruction are for administrative and procedural efficiency purposes and are not intended to be substitutes for substantive legal rights under the UCMJ or any other provision of law.

16. Medical Care. Offenders whose sentences include punitive separation and who are pending completion of appellate review, and are either on supervised release or on appellate leave, are still members of the naval service. Accordingly, they are authorized medical care to the same extent as other naval Service Members. An offender on supervised release whose administrative or punitive separation has been executed is not eligible for military medical care. Offenders who are retired are entitled to medical care as any other military retiree.

17. Records. An electronic system of records of clemency, parole, and MSR case files will be maintained by the NC&PB in accordance with the references. The system of files will include individual applications for clemency and parole/MSR, reports and recommendations indicating individual progress in confinement, while awaiting completion of appellate review, or on supervised release. Files will also include correspondence between the individual or his counsel and the NC&PB or other Navy offices, the promulgating order and staff Judge Advocate's review, record of trial, and a summarized record of the proceedings of the Board. Electronic files will be maintained in accordance with pertinent directives.

18. Release of Information. Records maintained by NC&PB for use in clemency, parole, and MSR determinations constitute law enforcement records. All requests for information under the Privacy Act and/or Freedom of Information Act will be processed in accordance with pertinent regulations.

19. Correspondence and Questions. Correspondence and questions pertaining to the DON clemency and parole systems as contained

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within this instruction should be directed to the NC&PB, attention: President, Naval Clemency and Parole Board, 720 Kennon Street, SE, Room 322, Washington Navy Yard, Washington, DC 20374-5023. Telephonic requests may be made at DSN 325-6338 or Commercial (202) 685-6338. FAX requests may be made to DSN 325-6629 or Commercial (202) 685-6629. Internet inquiries soliciting general information about the NC&PB should be directed to the following website:
<http://www.secnave.navy.mil/mra/CORB/pages/ncpb/default.aspx>.

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CHAPTER 3
CLEMENCY

1. Clemency Review. Only selected offenders convicted by special or general courts-martial are eligible for initial and subsequent clemency review. The following are categories of selected offenders eligible for clemency review by NC&PB:

a. Mandatory Clemency Review. Applies to any offender, whose sentence as approved by the CA (or the sentence contained in Entry of Judgment for sentences adjudged on or after 1 January 2019) includes confinement for 12 months or more, including any offender who has:

(1) Been transferred to the jurisdiction of the Attorney General of the United States and/or is incarcerated in a facility of the FBOP serving a term of confinement adjudged by court-martial.

(2) Been released on parole from an FBOP facility by the USPC and is under the supervision of a USPO.

(3) Not submitted a written waiver of clemency review but is entitled to mandatory clemency review until released from supervision.

b. Requested Clemency Review. Sentences approved by the CA (or the sentence contained in Entry of Judgment for sentences adjudged on or after 1 January 2019) that includes confinement for less than 12 months with an unsuspended punitive separation, and requests from any Commanding Officer or Officer-in-Charge of a military facility and/or an appropriate authority of the FBOP.

c. Coast Guard. Upon request of the Commandant, USCG, any USCG offender's case may be reviewed and an advisory opinion provided by the NC&PB.

2. Eligibility. All offenders eligible for clemency review may be granted clemency of an appropriate type with regard to the unexecuted portion of the sentence.

a. Offenders whose approved sentence (or sentence contained in Entry of Judgment for sentences adjudged on or after 1 January 2019) includes confinement for 12 months or more or an

approved, unsuspended punitive separation will ordinarily be eligible for remission, mitigation, or suspension of any unexecuted portion of their sentences. This includes upgrading the punitive discharge/dismissal or substituting the unexecuted punitive discharge/dismissal with an administrative discharge either under honorable conditions or under Other Than Honorable conditions.

b. Offenders whose approved sentence (or sentence contained in Entry of Judgment for sentences adjudged on or after 1 January 2019) includes an approved, unsuspended, unexecuted punitive discharge or unsuspended dismissal are eligible for restoration, retention, or reenlistment, if they submit a written request and have completed all or a portion of the sentence to confinement.

c. Ordinarily the following offenders are not eligible for restoration, retention, or reenlistment:

(1) Offenders convicted of an offense involving serious violence, national security as defined in the Judge Advocate General Manual (JAGMAN), distribution of controlled substances, desertion or unauthorized absence from a ship or unit in or scheduled to enter a combat area, sexual perversion, or theft from another Service Member.

(2) Offenders who are mentally or physically unsuitable for duty, or have a record of military or civilian offenses indicating incorrigibility.

d. Restoration or retention of an offender is accomplished either by remitting the unexecuted punitive discharge/dismissal or by suspending the approved (or as contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019), unexecuted punitive discharge/dismissal for a stated period of service or until the occurrence of an anticipated future event, the period of suspension not normally to exceed one year. The NC&PB will specify the period of suspension whenever it grants or recommends restoration to duty.

(1) The unsuspended, unexecuted punitive discharge of an enlisted offender may be suspended and the offender restored to duty only if sufficient time remains on the offender's current enlistment (as extended by lost time) to permit service through

the entire period of suspension.

(2) The unsuspended, unexecuted punitive discharge of an enlisted offender who does not have sufficient time remaining on the current enlistment (as extended by lost time) may be suspended if the offender agrees in writing, prior to the effective date of the suspension, to an appropriate extension of enlistment to enable the offender to serve the entire period of the suspension.

e. Any period of suspension directed by the NC&PB begins and expires as directed by the NC&PB or the SECNAV. The date the suspension period begins ordinarily is the date of the NC&PB action. Expiration of the period of suspension will automatically cause the remission of the punitive discharge/dismissal unless the suspension is sooner vacated. The suspension may be vacated for cause in accordance with the Manual for Courts Martial and other pertinent regulations. The NC&PB must be notified in writing of the vacation of any suspension.

f. In selecting offenders for restoration or reenlistment, consideration should be given to their demonstrated motivation for future honorable service, demonstrated ability to perform military duties in a creditable manner, mental and physical fitness for continued service, and the impact of the offenders' restoration or reenlistment on the morale, good order, and discipline of the Service.

g. The needs of the service govern reenlistment and restoration programs, not the desires of an offender. An offender not selected for a restoration program may not appeal, or otherwise contest the decision.

h. Select offenders whose punitive discharge or dismissal has been executed are eligible to apply for clemency to substitute an administrative discharge for an executed punitive discharge or dismissal. Specifically, NC&PB's jurisdiction is limited to considering those cases where the service member is retirement eligible (i.e., 20 years or more of creditable service) and where the service member files a clemency request with the NC&PB within five years of the date of the executed punitive discharge or dismissal.

3. Initiation of Clemency Review

a. Offenders Who Are Confined. For offenders who will be in confinement at the time of their clemency review eligibility date, the respective MCF commanding officer will determine the offender's clemency review status. In cases where a prisoner is adjudged a sentence to confinement of 12 months or more but has a pretrial agreement to serve less than 12 months confinement, the NC&PB is still required to conduct a mandatory clemency review.

b. Offenders Who Are Not Confined. For offenders who will not be in confinement at the time of their clemency review eligibility date, the CA will determine whether the offender has waived clemency or requested clemency. If the CA determines that the offender subject to mandatory clemency review has not waived clemency, or an offender has requested clemency review, the CA will initiate the clemency review process. The fact of receipt or non-receipt by the CA of a waiver of mandatory clemency review or a request for clemency review may be the basis upon which a determination is made to initiate the clemency review process.

4. Clemency Review Eligibility Date. The NC&PB will conduct initial clemency review for all eligible offenders within 90 days of their respective eligibility dates. Any required subsequent reviews will be conducted within 30 days of the anniversary of the clemency review eligibility date.

a. The clemency review eligibility date for all mandatory clemency review cases usually is nine months from the confinement begin date. The clemency review eligibility date for all requested clemency review cases is 10 days after the date the offender submits a request for clemency review to the CA or the OEGCMJ. This paragraph does not apply to those offenders serving approved sentences (or sentences contained in Entries of Judgment for sentences adjudged on or after 1 January 2019) of confinement for life without parole, if that sentence was adjudged for an offense committed on or after 30 October 2000.

b. For purposes of establishing the clemency review eligibility date, the "confinement begin date" includes a constructive date calculated as follows: adjudged date minus

all days of pre-trial confinement, and any administrative pre-trial confinement credits, plus the days the sentence to confinement was properly deferred. Subsequent reviews conducted "annually thereafter" means until completion of supervised release.

c. Upon request by the President, NC&PB, the CA will provide the name of any offender tried by court-martial who was adjudged a punitive separation and confinement of 12 months or more, the date sentence was adjudged, and if possible, the period the offender spent in pre-trial confinement and the sentencing conditions of any pre-trial agreement, particularly as it relates to the period of confinement approved (or confinement contained in Entry of Judgment for sentences adjudged on or after 1 January 2019) and suspended.

d. Within 60 days of receipt of all required documentation, the NC&PB will conduct the offender's initial clemency review. Subsequent clemency reviews will be conducted within 30 days of the offender's clemency review eligibility date. For offenders adjudged a sentence less than 30 days from the publication date of reference (i), eligibility dates are as follows:

(1) When the approved unsuspended sentence to confinement (or unsuspended sentence to confinement contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019) is 12 months or more, initial clemency review usually occurs no later than nine months from the date confinement began, or within 90 days after the CA's action is received by the MCF to allow processing time. Subsequent reviews will occur at least annually thereafter.

(2) When an offender's approved, unsuspended sentence (or unsuspended sentence contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019) is 12 months or more, but less than 20 years, consideration by the NC&PB will be at least annually, beginning three years from the initial date of confinement.

(3) When an offender's approved unsuspended sentence (or unsuspended sentence contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019) is 20 years or more but less than 30 years, consideration by the NC&PB will be at least annually, beginning three years from the date

confinement began.

(4) When an offender's approved, unsuspended sentence is 30 years or more, including life, subsequent clemency review by the NC&PB will be at least annually, beginning 10 years from the date that confinement began. This paragraph affects only those offenders in which any act with a finding of guilty occurred on or after 16 January 2000. For offenders whose offenses with a finding of guilty occurred prior to that date and who have unsuspended, approved sentences (or sentences contained in Entries of Judgment for sentences adjudged on or after 1 January 2019) of 30 years confinement, including life, subsequent clemency review will occur not more than five years from the date confinement began and at least annually thereafter. This paragraph does not apply to those offenders serving approved sentences (or sentences contained in Entries of Judgment for sentences adjudged on or after 1 January 2019) to confinement for life without parole, if that sentence was adjudged for an offense committed after 31 October 2000.

e. For offenders adjudged a sentence more than 29 days after 11 March 2013, eligibility dates are as follow:

(1) When the approved unsuspended sentence to confinement (or unsuspended sentence to confinement contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019) is 12 months or more, but less than 10 years, initial clemency review shall not be more than nine months after the date confinement began. Subsequent reviews will occur at least annually thereafter.

(2) When the approved unsuspended sentence (or unsuspended sentence contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019) is ten years or more, initial consideration will be at least annually, beginning when the offender would otherwise be eligible for parole, whether or not the offender had an approved (or as contained in an Entry of Judgment after 1 January 2019) unsuspended punitive or administrative discharge or dismissal or an approved retirement. This subparagraph does not apply to those offenders serving approved (or as contained in an Entry of Judgment) unsuspended sentences of confinement for life without eligibility for parole adjudged for offenses committed after 31 October 2000. Subsequent reviews will occur at least annually

thereafter.

(a) The commanding officer confining an offender with an unsuspended sentence to confinement of 10 years or more may recommend a review of the offender for clemency due to extraordinary reasons before the offender would otherwise be eligible for an initial clemency review.

(b) An offender with an approved unsuspended sentence to confinement (or unsuspended sentence to confinement contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019) of 10 years or more may request clemency review due to extraordinary reasons, before the offender would otherwise be eligible for an initial clemency review. The request should set out those extraordinary reasons and be sent to the NC&PB through the commanding officer of the MCF. The request may be accepted or rejected by the Director, SECNAVCORB or President, NC&PB. If the request is accepted for review, the MCF will be notified in order to make the appropriate V/W notification and to initiate a disposition board with the commanding officer's recommendations.

(c) The Director, SECNAVCORB or President, NC&PB may also direct an initial clemency review before an offender would otherwise be eligible for an initial clemency review. In such a case, the MCF will be notified to allow for V/W notification and the initiation of a disposition board.

f. When an offender's approved, unsuspended sentence for an offense committed after 31 October 2000 includes confinement for life without parole, initial clemency review by the NC&PB will begin 20 years after the date confinement began, and thereafter at least once every three years. Subordinate clemency approval authorities may deny clemency for approved sentences (or sentences contained in Entries of Judgment for sentences adjudged on or after 1 January 2019) of life without parole.

g. Offenders sentenced to death are ineligible for clemency review unless the President of the United States commutes the death penalty to a lesser punishment.

h. In those cases, involving requested clemency review, the NC&PB will usually conduct the review within 60 days of receipt of the request. If the NC&PB does not have the documents

required to conduct its review but has received a copy of the request, it will initiate procedures to obtain the necessary documents.

i. The NC&PB may omit a scheduled clemency review when an offender waives clemency.

j. Upon receipt of significant new information about an offender, the NC&PB may conduct a clemency review before the offender's next clemency review eligibility date.

k. Except in the case of offenders sentenced to death, or to confinement for life or life without eligibility for parole, an individual may be granted special consideration for good cause by the NC&PB for clemency, restoration, or reenlistment.

l. When an offender is considered for parole, the NC&PB will also conduct a clemency review and will consider requests for restoration to duty or reenlistment if desired by the offender. If the offender is denied parole, the date of that denial establishes the offender's clemency review eligibility date for subsequent annual reviews.

m. After an offender is released to supervised release, the NC&PB will conduct a clemency review hearing within 30 days of the one-year anniversary of the date released to supervision. Thereafter, the NC&PB will conduct annual clemency reviews within 30 days of the supervision commencement date; thus, the offender's release date to supervised release becomes the clemency review eligibility date for subsequent annual reviews.

(1) If an offender is returned to confinement following the revocation of supervision, the NC&PB will resume clemency reviews within 30 days of the anniversary of the clemency review eligibility date. Such clemency reviews will commence after the offender serves 12 months of confinement following their return to the MCF.

(2) If an offender is not returned to military control, but supervision has been revoked and reinstated, the NC&PB will normally consider the offender for clemency 12 months after supervision has been reinstated and annually thereafter.

n. In cases involving mandatory clemency review on an

offender's clemency review eligibility date or where lack of documentation prevents NC&PB from conducting a timely review, the NC&PB may grant clemency in an amount that does not exceed the unexecuted confinement, forfeitures, or fine, including periods of suspension, equivalent to the lapse of time between the clemency review eligibility date and the date of review. Punitive separations are not affected by this administrative enforcement provision.

o. Failure of the NC&PB to receive the documents required for conducting clemency review within 90 days after an offender's clemency review eligibility date, without good cause shown, will permit the NC&PB to invoke the enforcement provision found in paragraph 4n of Chapter 3. If good cause is found to exist, the NC&PB will review the case, including those cases in which no portion of the sentence remains unexecuted. In those cases in which no portion of the sentence remains unexecuted, the NC&PB will make a determination that its review of unexecuted portions of the sentence was hindered by the good cause found and recommend corrective action, if appropriate, to the Secretary.

5. Schedule. Offenders who are eligible for clemency review (except for offenders in the custody of the FBOP or under the supervision of a USPO) and offenders who desire to request clemency will act in accordance with the following schedule:

a. Clemency Review. Within 10 days after receipt of the CA's action, or Entry of Judgment in cases after January 1, 2019, an offender eligible for mandatory clemency review who does not desire review by the NC&PB will submit a written waiver to the NC&PB. The waiver should include both a signature and date to ensure compliance with applicable time goals.

(1) If the initial clemency and parole eligibility dates are within 30 days of each other they may be combined to establish the singular subsequent annual review date for both.

(2) If the initial clemency and parole eligibility dates are greater than 30 days apart, there will be two separate boards for clemency and parole. The following year's annual clemency and parole review will be the date parole was denied which will then become the annual review date for both.

(3) A waiver of initial clemency review will be executed by the offender in the presence of and witnessed by a commissioned officer or a civilian employee (GS-12 or above). The witness will advise the offender of the clemency options available and the consequences of the waiver.

(4) If an offender waives the initial clemency review, the CA, commanding officer, or OEGCMJ, as appropriate, will forward the original of the completed Waiver of Clemency Review, DD Form 2715-3 (Mar 13), or its equivalent, and a copy of the promulgating order or results of trial (or Statement of Trial Results for cases on or after 1 January 2019) directly to the President, NC&PB, per the schedule for submission of post-trial progress reports.

b. Requested Clemency Review. Within 90 days of receiving the CA's action, or the Entry of Judgment for cases adjudged after 1 January 2019, the offender can request a clemency review. Failure to meet the submission requirements in a timely manner, without good cause shown, may result in denial by NC&PB of the request for clemency review. The offender is entitled to the assistance of defense counsel in submitting such a request.

c. The MCF will ensure that offenders eligible for annual clemency review are advised of their annual review date in advance.

d. Offenders may withdraw their case from clemency review by the NC&PB any time prior to the NC&PB's review by submitting a signed written withdrawal witnessed in accordance with the provisions of paragraph 10c of Chapter 3. The signed written withdrawal may be in the form of a letter or a pen-changed modification of DD Form 2715-3 (Mar 13), the pen-change indicating "withdrawal" or "withdraw," as appropriate, wherever the word "waiver" or "waived" appears.

e. Waiver of submission of matters under Rule for Courts-Martial 1105 does not constitute a waiver of clemency review under the provisions of this manual. (Effective 1 January 2019, waiver of submission of matters under Rule for Courts-Martial 1106 does not constitute a waiver of clemency review under the provisions of this manual.)

6. Special Clemency Reviews

a. Commanding officers may submit clemency review documentation to the President, NC&PB, for a special review any time before execution of the punitive separation or completion of confinement. This type of request normally should be reserved for instances in which newly discovered, substantially relevant information would alter a previous recommendation.

b. The CMC and the BUPERS may request special reviews as deemed necessary.

c. The ASN (M&RA), Director, SECNAVCORB, or President, NC&PB, may direct special reviews. The NC&PB may also review cases on its own motion.

7. Post-Trial Progress Report. Recommendations for clemency review should include a current post-trial progress report, although the convening of a Special Disposition Board is not required. At a minimum, the post-trial progress report should include:

a. A signed written request for clemency for those cases where the offender is not entitled to mandatory clemency review.

b. A statement from the offender indicating the type and amount of clemency requested, along with detailed justification for the request.

c. An evaluation from either the offender's commanding officer or the CA regarding the offender's attitude, conduct, and performance if the offender returned to duty for more than 90 days after their release from confinement.

d. An evaluation from either the offender's commanding officer or the CA regarding the offender's potential for restoration, retention, or reenlistment and appellate leave status.

e. A psychological/psychiatric evaluation if one was completed after the sentence was adjudged, or if an evaluation is deemed appropriate in light of circumstances made known to the commanding officer or the CA since the date sentence was adjudged, including a substance abuse evaluation, if

appropriate.

f. Endorsements from officials in the chain of review.

g. For offenders on appellate leave at the time of their clemency review eligibility date, the CA or the OEGCMJ will forward a copy of the offender's executed appellate leave orders along with information related to the payment of any fines adjudged or restitution made to any victims, and all other relevant information to the NC&PB.

h. If the NC&PB has not received a post-trial progress report for an offender still serving confinement when the offender is eligible for the annual review of their case, the NC&PB will hear the case as scheduled unless it directs that the case review be held in abeyance until the report is received.

8. Timeliness and Schedule for Submission of Post-Trial Progress Reports

a. For the NC&PB to conduct an initial clemency review within 90 days of the offender's clemency review eligibility date, and within 30 days of the anniversary of the offender's annual clemency review eligibility date, the post-trial progress report must be received in a timely manner. To ensure timeliness, the following provisions for submission of the post-trial progress report are established:

b. Post-trial progress reports on offenders with approved sentences (or sentences contained in Entries of Judgment for cases adjudged on or after 1 January 2019), including unsuspended punitive separations and less than 12 months confinement who will not be confined at the time of their clemency review eligibility date will be submitted to the NC&PB as soon as practicable but no later than 30 days after the date of the request.

c. Post-trial progress reports on offenders who will be in confinement at the time of their clemency review eligibility date will be submitted to the NC&PB when the offender has served seven months from the date confinement began and then annually thereafter on the anniversary of the clemency review eligibility date until completion of the confinement period.

d. Post-trial progress reports for offenders programmed for transfer to the custody of the FBOP will be submitted to the NC&PB four months prior to the projected transfer date, if possible. Each of these post-trial progress reports should be clearly marked as pertaining to an upcoming federal transfer. NC&PB will forward a copy of the offender's briefing file held by NC&PB to the UPSC (with recommendations, as appropriate).

e. Copies of the offender's post-trial progress reports will accompany an offender when they are transferred to another MCF or confinement facility for completion of the court-martial sentence. One copy of the offender's most recent post-trial progress report and a copy of the offender's transfer orders will be sent to the NC&PB. Should the offender's conduct have significantly changed since the date of the most recent progress report, comments to that effect should be made by endorsement of the commanding officer.

9. Procedures for Submission and Endorsement of Post-Trial Progress Reports for Clemency Review

a. Commanding officers will submit a copy of the post-trial progress report to the President, NC&PB, for offenders not in confinement at the time of their clemency review eligibility date.

b. Commanding officers will submit a copy of the post-trial progress report to the President, NC&PB, for all naval service personnel in confinement at the time of their clemency review eligibility date.

c. Commanding officers will ensure that the post-trial progress reports are completed as follows:

(1) All required DD forms, or their equivalent, comprising the basic progress report, plus the individual's clemency request, if any.

(2) Offenders who have approved sentences (or sentences contained in Entries of Judgment for cases adjudged on or after 1 January 2019) will be evaluated for substance use disorder. The evaluation will be made by a trained substance use counselor whose primary duty is screening and evaluating Service Members for substance abuse. If the counselor determines the offender

meets the criteria for "severe" disorder, the counselor will refer the offender to a psychiatrist or clinical psychologist trained in substance abuse matters for a medical diagnosis. The evaluation will also indicate if a psychological or psychiatric diagnosis can be made. If the offender has a record of treatment or counseling with the Navy or Marine Corps Substance Abuse Program prior to incarceration, that fact should be brought to the attention of the NC&PB.

(3) Offenders convicted of sex offenses or other serious violent crimes whose approved unsuspended sentence to confinement (or unsuspended sentence to confinement contained in the Entry of Judgment for cases adjudged on or after 1 January 2019) includes 12 months or more, an evaluation will be completed by a psychiatrist, clinical psychologist, or clinical social worker trained in the evaluation and treatment of those types of offenders.

(a) The evaluation will include a complete, individualized psychological/psychiatric history of the offender.

(b) Any relationship between the psychopathology (including substance use) and the confining offense will be specified, even if the psychopathology did not render the offender incompetent. If a relationship is identified, the probability of recurrence of criminal behavior should also be clearly stated.

(c) In cases involving child abuse, sexual abuse, or other serious violence against a person, a recommendation concerning treatment should be made. Whether or not treatment is recommended, an assessment of the offender's threat to society will be included. If the offender has had any contact with the Family Advocacy Program of the Navy or Marine Corps, that fact should be brought to the attention of the NC&PB.

(d) The psychiatrist, clinical psychologist, or clinical social worker must also estimate the efficacy of a post-discharge treatment program if there is any history of psychological or substance abuse problems, and indicate whether or not the individual is motivated for such a program, if appropriate.

(e) The psychological or psychiatric evaluation should be amended or a new evaluation prepared whenever new information might change the impression, diagnosis or prognosis.

(f) NAVPESCOM may, upon submission of qualifications, waive the requirement for a clinical psychologist/social worker to conduct the evaluation and accept a psychological evaluation from any psychologist who has been trained in the treatment and rehabilitation of the specific offense. If no such individual is available at the MCF, the offender will be referred for such evaluation.

(4) The post-trial progress report should state the citizenship of the offender. In cases of an offender who is not a U.S. citizen, the report should indicate the date and place of entry and, where applicable, an alien registration number.

(5) A statement will be included indicating that an FBI National Crime Information Center computer system criminal history check has been made and the results.

(6) Victim impact statements will be considered, if available.

(7) A disposition board will submit recommendations and supporting reasons in the cases of all offenders confined in MCFs.

(8) Commanding officers will submit recommendations and supporting justification in the cases of all offenders confined in MCFs.

d. If the sentence does not include confinement or if confinement has been deferred or suspended from the date confinement was adjudged, a report of a disposition board and a recommendation from the commanding officer are not required. The remainder of the forms, however, will be completed by the CA or the OEGCMJ.

e. If the commanding officer is unable to forward a complete post-trial progress report because the adjudged or sentenced offender refuses to cooperate in its preparation, is an unauthorized absentee, or because of an explained administrative error, the commanding officer will forward the

incomplete report and state the reason(s) why normal procedures could not be followed.

f. If new information is obtained which would result in a change to a previous recommendation and final action has not been taken by the NC&PB, the commanding officer will notify the NC&PB immediately. Appropriate forms and information supporting the new request, waiver, or recommendation will be forwarded to NC&PB as soon as practicable.

g. The NC&PB will request the submission of progress reports in the cases of naval offenders who are serving sentences of courts-martial in the custody of the FBOP. If such offenders have been paroled from the FBOP, the NC&PB will request reports and recommendations from supervising USPOs. Requests from offenders, either incarcerated or paroled, are not required.

10. Procedures for Waiving Mandatory Clemency Review

a. The CA, commanding officer, or the OEGCMJ (the authority geographically closest to the offender unless otherwise designated by the OEGCMJ), will ensure that offenders waiving mandatory clemency review understand:

(1) The consequences of their options as outlined on DD Form 2715-3 (Mar 13).

(2) That the NC&PB will not review the case again until the next annual mandatory clemency review unless scheduled or directed to do so by qualified authority.

b. A waiver of initial mandatory clemency review by an offender with a sentence of two years or less constitutes a waiver of all clemency review because the minimum release date will ordinarily occur before the first anniversary of the clemency review eligibility date.

c. An offender may waive any mandatory clemency review in the presence of the commanding officer or designee. The commanding officer or designee will advise the offender of the clemency options and their consequences and will witness execution of the form. If legal counsel is requested by the offender, the commanding officer or designee will contact the

offender's lawyer or nearest judge advocate.

d. An offender may rescind any waiver of clemency review submitted within 90 days of the date of the execution of the waiver. Rescissions will be submitted via the offender's commanding officer (copy to: NC&PB and the OEGCMJ over the offender at the time of the offender's court-martial). Within 10 days of receipt, the commanding officer will forward the rescission with recommendations to the NC&PB.

e. If an offender rescinds their clemency review waiver, a post-trial progress report is required only if the offender is still in confinement on the date of rescission. If the offender is not confined at the time of rescission, but desires NC&PB to consider information relating to their behavior, attitude, and progress during their period of confinement, it is the offender's responsibility to obtain and submit such information. The offender may submit a statement from others attesting to their individual behavior, attitude, and progress during and after confinement. A Disposition Board is not required.

f. The forwarding endorsement on the Waiver of Clemency Review will contain a certification that the offender submitting the waiver does not have a substance use disorder or has been offered treatment through either a Military Treatment Facility (MTF) or the VA.

g. Offenders should be informed that withdrawal from appellate review does not constitute a waiver of initial clemency review.

h. Waivers of mandatory clemency review, subsequent to the initial clemency review, should be submitted per the schedule for submission of post-trial progress reports.

11. Notification of Pending Appearances Before a Clemency Hearing. Once a disposition board has been scheduled at an MCF, the offender will be advised by the MCF staff to notify whoever they plan to represent them before the NC&PB. All appearances are required to coordinate their attendance with NC&PB staff.

12. Action Upon Receipt of NC&PB Clemency Decisions

a. The appropriate service headquarters will ensure that

the clemency decision is entered in the service record of the offender, and any known victim is informed. Entries will include action directed and the date, the authority and, if applicable, the rationale. In cases of restoration to duty, the entry will include the date specified for restoration to duty, the period for which the unexecuted portion of a sentence is suspended, and the total unexecuted portion of the sentence remaining to be executed if the suspension is subsequently vacated. If the offender has completed the period of confinement and only the punitive separation is suspended incident to restoration, the fact should be clearly stated: "No confinement remains to be served on this sentence."

b. If clemency review results in modification of the sentence, the OEGCMJ will issue a supplementary court-martial order implementing such action and will provide the offender with a copy of that action.

c. Where final clemency action taken under this instruction results in the suspension or remission of a punitive separation, and restoration to active duty, administrative discharge proceedings may not be initiated against the offender except for matters separate and distinct from those involved in the court-martial for which the clemency action was taken.

d. Should the NC&PB direct that the offender be afforded an opportunity to participate in a treatment/rehabilitation program which the offender had waived prior to the NC&PB action, the OEGCMJ will re-offer the program to the offender.

e. All clemency actions ordered under this instruction are effective the date of the NC&PB/SECNAV decision.

f. In those cases, where confinement is remitted to the extent the offender's sentence to confinement has been completed but judicial review has not been completed, the OEGCMJ or other proper authority will ensure that the offender has valid appellate leave orders with instructions relating to the obtaining/retaining of a valid Armed Forces Identification Card (AFIC).

13. Unsatisfactory Conduct. If unsatisfactory conduct becomes known after submission of the post-trial progress report but prior to receipt of final action relating to clemency (or prior

to issuance of the supplementary court-martial order implementing a grant of clemency) the following must occur without delay:

a. The commanding officer, the CA, or the OEGCMJ, will report the circumstances of the unsatisfactory conduct to the President, NC&PB. The report will include recommendations to grant or deny clemency or reconsider any previous NC&PB/SECNAV decision to grant clemency.

b. The OEGCMJ will withhold execution of the clemency action directed, pending notification, reconsideration, and final determination by the NC&PB/SECNAV.

c. The OEGCMJ who withholds clemency action will make an immediate report to that effect to the President, NC&PB. Once the clemency action has been withheld, the OEGCMJ may not execute any part of the clemency action or execute a punitive separation until the decision of the NC&PB/SECNAV has been reconsidered and a final determination has been promulgated by the NC&PB.

d. A field service record or service record book entry documenting the withholding of clemency will be made.

e. The commanding officer or the OEGCMJ will notify the offender of any decisions involving clemency. If a clemency action ordered by the NC&PB/SECNAV is withheld, the offender will also be provided justification for the decision and will be notified of the option to submit matters to the NC&PB for consideration.

f. Upon receipt of the OEGCMJ report, the NC&PB will promptly notify the offender of the date the NC&PB will reconsider its clemency action/recommendation, and provide the opportunity to submit, via the OEGCMJ, matters for consideration by the board. The NC&PB/SECNAV may reaffirm, modify or withdraw the clemency order previously issued.

14. Liaison With Other Clemency Authorities. Authorities desiring to exercise clemency in an offender's case will coordinate with the NC&PB. Liaison will be accomplished for cases involving enlisted/officer offenders as follows:

a. An OEGCMJ who takes action to remit or suspend any part or amount of a sentence that includes a punitive separation or confinement of 12 months or more will ensure that a copy of the official action is forwarded, without delay, to the President, NC&PB. A copy will be provided to NAVPERSCOM (PERS-00D) or CMC (PSL Corrections) as appropriate.

b. An OEGCMJ who plans to grant clemency will determine whether or not the case is pending review by the NC&PB within the next three months.

(1) In the event the case is not scheduled for initial clemency review or annual review within in the next three months and a special review has not been directed, the OEGCMJ will exercise clemency as deemed appropriate and forward a copy of the supplementary court-martial order to the NC&PB.

(2) If the review is scheduled within the next three months, the OEGCMJ will notify the President, NC&PB, that clemency action is being considered in the case. The President, NC&PB, will delay review of the case until receipt of the supplementary court-martial order.

15. Execution of Punitive Separations. Approved unsuspended punitive discharges (or unsuspended punitive discharges contained in an Entry of Judgment for cases adjudged on or after 1 January 2019) of offenders with confinement sentences of 12 months to ten years will not be executed until completion of both appellate review and the NC&PB's initial mandatory clemency review. Offenders with a greater than ten-year sentence to confinement may be discharged upon completion of appellate review. The OEGCMJ or other proper authority will issue a supplemental court-martial order ordering the execution of the punitive discharge or dismissal. Copies will be provided to the President, NC&PB; NAVPERSCOM (PERS-00D) or CMC (PSL Corrections); and the Navy and Marine Corps Appellate Leave Activity (NAMALA).

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CHAPTER 4
PAROLE

1. Policy and Objectives. Parole is the principal means of conditional release from confinement to ensure the smooth, structured release of the offender into the community as a law-abiding citizen. It provides incentives for the offender to reform and ensures continued access to treatment and rehabilitation services, while enabling the naval service to retain custody through supervision to ensure public safety. Every parole determination will be based on an assessment that the offender has the potential to successfully return to society and function as a responsible, self-reliant, and law-abiding citizen.

2. Criteria

a. An offender sentenced to life without parole is ineligible for parole, unless the SECNAV officially commutes the life without parole sentence to a lesser sentence. An offender confined pursuant to a death sentence is ineligible for parole, unless the President of the United States officially commutes the death sentence to a lesser sentence. An offender is eligible for release on parole when they request parole and when:

b. The offender has an approved unsuspended punitive discharge or dismissal.

c. The offender has an approved sentence (or a sentence contained in an Entry of Judgment for sentences adjudged on or after 1 January 2019) that includes an unsuspended punitive separation.

(1) The approved unsuspended sentence (or unsuspended sentence contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019) or aggregate sentence to confinement is 12 months or more but less than 30 years and the offender has served one-third of the sentence to confinement but not less than six months.

(2) The approved unsuspended sentence (or unsuspended sentence contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019) includes confinement for

more than 30 years up to life and the offender has served at least 10 years.

(3) The offender has been sentenced to confinement for life and has served at least 20 years of confinement. This applies only to those offenders in which any act with a finding of guilty occurred after 15 February 2000. For offenders whose offenses with a finding of guilty occurred prior to that date, NC&PB consideration will occur after the offender has served not more than 10 years from the confinement begin date and at least annually thereafter.

d. If the approved sentence (or the sentence contained in Entry of Judgment for sentences adjudged on or after 1 January 2019) includes confinement and a fine, and additional confinement is mandated if the fine is willingly not paid, parole eligibility will be based only on the basic term of confinement for the offender.

e. If confinement has been properly ordered because a fine has not been paid, eligibility for parole will be based on service of at least six months of the sentence to confinement and annually thereafter.

f. Offenders re-confined under parole revocation proceedings will not normally be eligible for parole until one year from the date the supervision was terminated.

3. Jurisdiction

a. Naval Service Offenders. Naval Service Offenders serving confinement in MCFs as a result of an approved sentence (or a sentence contained in an Entry of Judgment for sentences adjudged on or after 1 January 2019) imposed by courts-martial and whose sentence includes confinement for 12 months or more, and who have served at least one-third but not less than six months of their sentence to confinement, are eligible for a parole review hearing under this instruction.

b. USCG Offenders. The NC&PB will review the cases of USCG offenders who are eligible for parole in accordance with the same policy and procedures that apply to naval service offenders.

c. Naval Service Offenders in the Custody of Federal, State, or Local Authorities.

(1) Offenders who have been transferred from a MCF to the FBOP do not fall under the jurisdiction of SECNAV (NC&PB) for parole purposes but will be considered for parole through the USPC.

(2) Naval Service Offenders in custody of state or local authorities confined as a result of a court-martial may or may not be within the parole authority of SECNAV depending upon the agreement arranged upon the transfer/detention of the offender. Such cases will be determined on a case by case basis.

d. Naval Service Offenders Confined in Federal, State, or Local Confinement Facilities Not Serving Court-martial Sentence. Naval service offenders in the custody of federal, state, or local authorities not serving in confinement as result of courts-martial, but who have a military detainer placed upon them requiring the return to custody upon release are not within the jurisdiction of the NC&PB until the date of their return to military custody.

e. Until the expiration of their maximum release date (without credit for good time, earned time, or special acts abatement), offenders who are granted and accept parole remain under the control of the commanding officer of the MCF from which they are released or such other facility or command as may be directed by NAVPERSCOM (PERS-00D) or CMC (PSL).

4. Parole Eligibility

a. The NC&PB will consider an offender for parole when they first become eligible.

(1) The prisoner has an approved (or as contained in the Entry of Judgment for sentences on or after 1 January 2019) unsuspended punitive discharge or dismissal, or an approved administrative discharge or retirement.

(2) The unsuspended sentence or aggregate sentence to confinement is 12 months or more.

(a) In cases in which the sentence to confinement is

less than 30 years, the offender must have served one-third but no less than six months of the term of confinement.

(b) In cases in which the sentence to confinement is 30 years or more, up to and including life, the prisoner must have served at least 10 years of confinement.

(c) In cases in which a prisoner is convicted of an offense committed after 15 February 2000, and has been sentenced to confinement for life, the prisoner must have served at least 20 years of confinement.

b. A prisoner sentenced to death or life without eligibility for parole is ineligible for parole.

c. Pre-trial confinement and judicially ordered administrative pre-trial confinement credits count for determination of an offender's parole eligibility date. Periods of officially approved deferment or suspension of a sentence to confinement do not.

d. Projected good conduct time and other abatement of confinement will be excluded in computing eligibility for parole.

e. The parole eligibility date for a parole violator returned to confinement will be no earlier than 12 months from the date of their return to military control.

5. Schedule for Submission of Parole Requests

a. Offenders who are eligible for, and desire parole, may request parole at their parole eligibility date.

b. Parole review hearing documents concerning initial parole requests, including endorsements, will be submitted to the NC&PB within 60 days of the submission of the parole request.

c. Parole review documents for second and subsequent NC&PB parole reviews will be submitted in conjunction with submissions required for annual clemency review.

d. Submission of an offender's parole request will not be

discontinued or delayed because the offender has not developed a satisfactory parole plan. In such instances, the tentative parole plan representing the best efforts of the offender will be used in processing the request for parole.

6. Parole Request Contents. A parole request should include a statement from the offender requesting release from confinement under supervision of parole, reasons the request should be granted, and the offender's proposed plan for successful reintegrating into society if released on parole. An adequate parole plan should also include a valid tender of residence, an employment plan, and any individual and group therapy/counseling programs specific to the offenses. The offender will be responsible for all costs associated with therapy or counseling while on parole. If the offender is confined in an MCF, the commanding officer will verify the elements of the offender's parole plan, including the credentials of any professionals involved in any outpatient/inpatient programs.

a. Employment Plan. A valid tender of employment is not necessarily required to be included in the parole package forwarded to the NC&PB. However, except for medically disabled offenders, a valid tender of employment is required to be forwarded to the President, NC&PB, for consideration and approval prior to the release on parole of the offender from the MCF. Qualifying employment includes:

(1) A tender of employment from a responsible prospective employer or statement from a recognized trade union or similar organization that the offender will be considered a member of the organization in good standing and that, through the normal functions of the organization, the offender will be afforded employment rights and assistance.

(2) An assurance by a reputable offenders' aid, welfare, or employment organization, that it will assist the offender in obtaining employment after release on parole and will assure the parolee's livelihood until permanent employment is obtained.

(a) Because of the heavy burden already carried by aid organizations and similar agencies, the use of these agencies will be limited to those cases in which such action appears absolutely essential to a suitable release plan.

(b) The United States Employment Service and similar state agencies will not be considered in the same category as offender aid associations and other welfare organizations as federal and state employment agencies are not always in a position to obtain or offer assurance of employment for individuals prior to release from confinement and prior to a personal interview.

b. Waiver of Employment Requirement. The NC&PB may waive the employment requirement as a prerequisite for parole under any one or more of the following conditions:

(1) On-the-job training or schooling has been approved.

(2) The parole plan includes evidence of adequate means of support and sufficient funds to pay living and education expenses, and the offender requesting parole has been accepted by an accredited educational institution.

(3) The parole plan involves release on parole via 30 days inpatient treatment at a VA Hospital.

(4) The parole plan involves long-term hospitalization, residential treatment, or participation in a halfway house type program.

(5) In the judgment of the NC&PB, circumstances warrant release on parole before suitable employment is obtained.

(6) Adequate financial support exists for the offender without the offender being a financial burden on society, or the offender's family, and the offender will be involved in a worthwhile endeavor approved by the NC&PB.

c. Prior to release on parole, the parole plan must be approved by an officer of the U.S. Probation Service.

7. Disposition Board Parole Hearings. Disposition boards will conduct their parole hearings in accordance with the following:

a. The offender requesting parole will be given at least 30 days notice of the time, place, and purpose of the hearing and will be informed of their right to a personal hearing before the board.

b. The offender requesting parole is not entitled to a lawyer, but may be represented by a member of the staff. The function of the representative is to offer a statement at the conclusion of the hearing and to provide additional information as may be requested by disposition board members. The Military Rules of Evidence do not apply during the proceedings.

c. The disposition board will make recommendations as to whether parole should be granted or denied, and will provide specific reasons for the recommendations.

d. If the disposition board recommends that parole be granted, it should also make recommendations regarding special conditions for parole that would assist the offender in their reintegration into the community.

8. Post-Trial Progress Reports

a. When an offender confined in an MCF requests parole, the commanding officer will:

(1) Forward a complete post-trial progress report as required for clemency review. Special attention will be paid to an offender's potential for success on parole. Additionally, a psychiatrist, clinical psychologist, or clinical social worker will summarize the impact of environmental factors on the offender with special emphasis on the environment to which the offender plans to return. Psychopathology and the substance use history of the offender (as well as other individuals who will be part of the parole plan) must be explored and suggestions about possible conditions of parole must also be provided.

(2) Ensure information concerning an offender's marital status is correct. When divorce, common-law marriage, extramarital relationships, or problem relationships exist, clarify them and evaluate their impact on the parole plan.

(3) Ensure that the individual's citizenship is accurately reflected in the post-trial progress report.

b. V/W will be provided an opportunity to submit information to the board. Victim impact statements and requests for personal appearances will be submitted to the NC&PB via the confinement facility, which has primary cognizance over matters

pertaining to the federal victim and witness assistance program.

9. Parole Review Hearings

a. The NC&PB will consider initial parole requests within 30 days of the parole eligibility date or as soon as practicable after receipt of the request.

b. If an offender's initial request for parole is denied, subsequent requests for parole will be reviewed by the NC&PB within approximately 30 days of the anniversary of the clemency review eligibility date unless a motion/recommendation for an exception is made by the board. Normally, application of an exception should be reserved for instances in which newly discovered, substantially relevant information would alter a previous recommendation or when the offender's potential for success on parole has improved significantly and the next regularly scheduled annual clemency review will be too late for parole to be a viable option.

c. Submission of a waiver of clemency review does not preclude submission of a request for parole.

10. NC&PB Actions

a. Upon receipt of an offender's request for parole and the post-trial progress report, the NC&PB will review the offender's case file and all information relevant to the parole request, including the recommendations of the Disposition Board, the commanding officer and, as applicable, CMC or BUPERS. After consideration of the case file, the recommendations, policy, and objectives for parole set forth within this instruction, the NC&PB will:

b. Grant or deny parole, and/or direct MSR at the offender's MRD.

c. Recommend, where appropriate, that the Secretary grant or deny parole.

d. Set the date that the offender will be released on parole.

e. Set the conditions of parole.

f. In unusual circumstances, advance or recommend the advancement of the parole eligibility date of an offender.

g. Ensure that known and registered victims are notified in advance of pertinent NC&PB actions by the V/W coordinator at each confinement facility. V/W notification will be documented as follows:

(1) V/W were contacted and no statements were provided.

(2) V/W were contacted and statement(s) are enclosed.

(3) There were no victims or witnesses requiring notification.

11. Factors for Parole Decisions. The NC&PB will consider the following factors when determining suitability for parole:

a. Nature and circumstances surrounding the offense(s).

b. The approved sentence (or sentence contained in Entry of Judgment for sentences adjudged on or after 1 January 2019) in relationship to the maximum imposable sentence and the sentences of other offenders imposed as a result of their commission of similar offenses under similar circumstances.

c. Mitigating, extenuating, and aggravating circumstances, pre-trial and post-trial matters, including the current situation and events that have occurred since any previous hearing.

d. Risk to public safety.

e. Confinement record (i.e., attitude, performance, acceptance of status while in confinement, and motivation).

f. Psychological profile, including age, education, marital, and family status.

g. Need for special counseling/therapy programs not offered by the MCF.

h. Prior military and civilian history.

i. Future plans and relevant conditions in the community in which the offender desires to reside on parole.

j. Impact of the offense upon the victim.

k. Good order and discipline within the Service.

l. Offender's current status with law enforcement authorities, such as the presence of a detainer on an offender. The status of the offender as a foreign national does not automatically preclude parole.

m. Other matters as appropriate.

12. Denial of Requests for Parole. Reason(s) for denial of parole include, but are not limited to:

a. Release on parole at this time would depreciate the seriousness of the offense(s) and promote disrespect for the law.

b. Due to the seriousness of the confining offense(s) and the short amount of time served on the sentence, a release on parole at this time would be premature.

c. The retributive and deterrent portion of the sentence to confinement has not yet been served.

d. Release would jeopardize the public welfare.

e. Although the offender has reached their parole eligibility date, the nature of the confining offense(s) prevents release on parole because release would be premature in view of at least one of the following:

(1) A weapon was involved in the offense(s).

(2) Excessive force was involved in the offense(s).

(3) Lack of remorse.

(4) Denial of guilt if the offender initially pled guilty or confessed.

(5) Rebellious, hostile, or anti-social attitude while in civilian or military confinement.

(6) Refusal to participate in offense related treatment programs.

f. Parole would be premature in view of the offender's history of:

(1) Prior offenses (civilian or military).

(2) Crimes related to alcohol or drug abuse.

(3) Assaultive behavior.

g. Motivation/attitude towards confinement is poor, marginal, or unsatisfactory as indicated by forfeiture of good conduct time, disciplinary reports, disciplinary and adjustment boards, unfavorable reports, lack of program involvement, or other identified problems.

h. Additional institutional treatment is required to enhance the offender's capacity to lead a law-abiding life.

i. The parole plan was incomplete because it lacked assured residence, verified tender of employment, individual/group therapy program treatment plan, or other specified requirement.

j. Current custody level is inappropriate to be considered a good risk for parole because the offender was:

(1) Recently denied elevation of custody level.

(2) Recently elevated but needs further observation or evaluation prior to making an adequate assessment of parole potential.

k. Other specified reasons.

13. Appeals

a. Denial by the NC&PB. Offenders denied parole by the NC&PB may file a written appeal to the Director, SECNAVCORB. The appeal must be submitted to the MCF commanding officer

within 30 calendar days of receipt of written notification that parole has been denied. No documents are to be attached to the appeal unless they contain new information and materials. Within 30 days of receiving the appeal, the commanding officer will provide an endorsement and recommendation and will forward the appeal directly to the Director, SECNAVCORB. The Director will affirm, modify, or reverse the decision, or order a rehearing by the NC&PB. The Director may also elect to forward an appeal to the ASN (M&RA) for final decision.

b. Denial by SECNAV. Offenders denied parole by the SECNAV or ASN (M&RA) have no further right to appeal.

14. Parole Rescission Proceedings

a. Unsatisfactory Conduct Defined. Conduct on the part of an offender that is sufficiently serious to be entered into the offender's official record is unsatisfactory. If the conduct occurs after submission of the post-trial progress report or appeal of a denial of parole, but prior to release on parole or action on the appeal, the following actions will be required:

(1) The commanding officer will immediately report unsatisfactory conduct to the President, NC&PB. The report will include a detailed summary of facts and circumstances and a copy of any relevant report of investigation or other documents related to the allegation(s). The report will also include a recommendation for disposition.

(2) If parole has been directed but the release has not been effected, the offender has five days to submit a written statement to the President, NC&PB.

b. Withholding Release on Parole. If parole has been previously directed, but release has not yet been effected, the commanding officer will delay the release pending the initiation of rescission proceedings and a final determination by the NC&PB.

c. Parole Rescission Proceedings. If the NC&PB determines that rescission of parole is not supportable based on the evidence, NC&PB will direct the offender's release on the effective date of parole. If NC&PB determines that rescission is supportable, rescission proceedings will be initiated. At

these proceedings the offender has a right to a personal appearance hearing before the disposition board. The rescission proceedings include the following procedures:

(1) The offender will be provided written notice of the alleged unsatisfactory performance/conduct and their rights at the rescission proceedings at least 48 hours prior to the hearing.

(2) At the hearing, the offender has the right to present documentary evidence, including affidavits from witnesses who cannot be present, and the right to call and cross-examine witnesses at no cost to the government.

(3) The disposition board will forward findings of fact and supporting evidence, directly to the President, NC&PB, along with one of the following recommendations: rescind the decision to grant parole, delay the effective date of release up to 90 days, or release the confinee on parole on the effective date.

(4) The NC&PB will inform the offender of the evidence relied upon, the reasons for the decision in writing, and that the rescission decision is final and not subject to appeal.

15. Judicial Action Prior to Release on Parole. If the commanding officer is in receipt of a Certificate of Parole but the offender's CA action or sentence is set aside, the commanding officer will notify the NC&PB. The NC&PB will then issue an action staying the offender's release on parole pending notification of the results of the action ordered by the appellate courts.

16. Conditions of Parole. Before the commanding officer releases an offender on parole, the offender must sign a statement waiving all good conduct time, earned time, and any special acts abatements earned through the date of release on parole and agree to abide by the conditions of parole set by the NC&PB. The DD 2716-1 and addendums will be used to establish general conditions of parole and will be attached to the parole certificate.

17. Change in Status. This paragraph applies to cases in which a punitive discharge or dismissal was adjudged and parole commenced prior to completion of appellate review.

a. If the sentence to confinement of the offender expires prior to completion of appellate review, the commanding officer responsible for the administration of the service record will:

(1) Issue appellate leave papers prepared at the time of release on supervision and direct the member to report to the nearest military installation or reserve unit to obtain an AFIC indicating their "Appellate Leave" status.

(2) Order the individual to an appropriate unit, if required. The individual may report in an appellate leave status provided such leave is granted under procedures established by the CMC or BUPERS, as appropriate.

(3) Furnish the individual with instructions and any other information deemed pertinent to clearly establish the individual's status and obligations.

b. If appellate review is completed and the supervisee's discharge is ordered executed before the term of confinement has expired, the commanding officer responsible for administration of the supervisee's service records will:

(1) Confirm that the most recent medical examination satisfied the requirements prescribed by BUMED or obtain a current medical examination.

(2) Process the separation documents, including a Certificate of Release or Discharge from Active Duty (DD Form 214).

18. Termination of Parole

a. By Completion of the Sentence. Parolees complete parole and are released from supervision at the expiration of the full term date.

b. By Suspension. Supervisees on parole can have their parole suspended pending actions related to alleged violations. Once due process is completed the parole status may be reinstated or the offender may be returned to confinement.

c. By Revocation. The NC&PB may revoke parole if the

parolee's behavior warrants return to confinement. In appropriate circumstances and upon the request of the parolee, the NC&PB may defer execution of the revocation for a period of time normally not exceeding one year. If deferment is granted and the parolee commits any further violations, the NC&PB may cancel the deferment, execute the revocation, and re-confine the parolee. Within 24 hours of the notification of revocation, a parolee who has not been re-confined will return to the MCF from which they were paroled. Transportation costs will be borne by the parolee. Parolees who fail to report within 24 hours become subject to apprehension and prosecution under the UCMJ.

d. By Judicial Action. If the CA's action is set aside or judicial review nullifies the existence of the approved sentence to confinement (or the sentence to confinement contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019), the basis of parole is nullified. The OEGCMJ or the NC&PB will notify the offender in writing via the offender's USPO that their parole is being held in abeyance and that orders will be forthcoming from the proper authorities. Transportation costs incident to the parolee's return to duty will be borne by the United States. Parolees who fail to execute the orders are subject to apprehension and prosecution under the UCMJ.

19. Notification of Pending Appearances Before a Parole Hearing. Once a disposition board has been scheduled at an MCF, the offender will be advised by the MCF staff to notify whoever they plan to represent them at the NC&PB's hearing. All appearances are required to coordinate their appearance with NC&PB staff.

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CHAPTER 5
MANDATORY SUPERVISED RELEASE (MSR)

1. Policy and Objectives. MSR is a highly effective technique to provide an orderly transition to civilian life and better protect the communities into which such offenders are released.

2. Eligibility. Offenders with an approved finding of guilt for offenses committed after 15 August 2001, and who are eligible for parole are eligible for MSR.

3. Criteria

a. If the approved sentence (or a sentence contained in Entry of Judgment for sentences adjudged on or after 1 January 2019) or adjudged sentence, if the CA has not acted, or prior to Entry of Judgment is less than three years, an offender will not normally be reviewed for MSR by the NC&PB, but will be considered for MSR by the MCF commander. If the MCF commander determines that MSR is appropriate for an offender, the commander will forward this recommendation to the NC&PB for a decision at the offender's last review before the offender's MRD.

b. The NC&PB considers all offenders for MSR returned to confinement with an approved sentence (or a sentence contained in an Entry of Judgment for sentences adjudged on or after 1 January 2019) of three years or longer as a supervision violator.

c. The MCF will provide timely advance notice to all V/Ws that the NC&PB will consider an offender for MSR. Responses by V/Ws will be forwarded with the supervision plan to the NC&PB.

d. Every offender with a three year sentence to confinement or longer must prepare an MSR supervision plan for review before the NC&PB reviews the offender for MSR. The plan must be acceptable to the NC&PB before the offender is released on MSR.

e. After the NC&PB reviews and accepts the MSR supervision plan, the MCF will send the approved plan to the appropriate U.S. probation office for review and approval by the supervising probation officer.

4. Procedures. When considering offenders for MSR, the following actions are required:

a. The MCF will inform offenders that they are eligible for MSR using the MSR briefing contained in Appendix D. The MCF will also ensure the offender acknowledges receipt of eligibility in writing. The signed copy of the MSR acknowledgement will be filed in the offender's record.

b. Offenders who are returned to duty will not be reviewed by the NC&PB for parole or MSR.

c. Military offenders with a finding of guilty after 15 August 2001 who have been transferred to the FBOP and are given early release through Good Conduct Time (GCT), Earned Time (ET), and Special Acts Abatement (SAA) may be placed on MSR. The USPC will determine the terms and conditions for MSR. In deciding whether or not to place a military offender on MSR, the USPC should consider the criteria in this instruction.

5. Submission Guidelines

a. A disposition board package will be submitted to the NC&PB for each offender eligible for MSR and at a minimum, will include a supervision plan with the following elements:

(1) Verified residence.

(2) Verified employment, effective employment assistance, or acceptance into a valid educational or vocational program.

(3) Drug treatment, aftercare, or urinalysis for drug offenders or alcohol treatment for alcohol related offenses.

(4) Reporting requirements.

(5) A restitution plan (if applicable).

b. The commanding officer will also include a report from the offender's counselor detailing release plan assistance provided by the staff (DD Form 2715-2) to assist the board in the determination of fault. The documents will be submitted to the board at the earliest possible time, but not later than 60

days prior to the Projected Minimum Release Date (PMRD).

c. If the MSR plan is rejected, the MCF may consider a Disciplinary and Adjustment board for failure to follow an order or hold all abatement time in abeyance until a satisfactory plan is submitted. If a satisfactory plan is not submitted by an offender, the commanding officer will submit pertinent data describing the offender's efforts to develop an acceptable release plan.

d. An offender's MSR supervision plan and case file will be considered approximately nine to 15 months prior to PMRD. At no time will the release plan and relevant information be provided to the NC&PB less than four months prior to the PMRD.

e. Those offenders not scheduled for a disposition board prior to their MRD or who waive their last disposition board are still required to have their MSR supervision plan reviewed for MSR by the NC&PB. MCF commanders will forward an MSR supervision plan and case file on eligible candidates, whenever possible, no later than four months prior to the PMRD.

6. Reconsiderations

a. Within 30 days of being notified of their assignment to MSR, offenders may request a reconsideration of the Board's decision. Reconsideration requests must include a copy of the NC&PB's MSR letter.

b. Reconsideration requests will be signed and dated by the offender, and submitted to the President, NC&PB. The President's decision may not be appealed.

7. Responsibilities

a. NC&PB. Within 45 days of receipt, the NC&PB will promptly review each supervision plan and case file. The NC&PB may impose any additional reasonable supervision conditions to the MSR supervision plan that, in the judgment of the NC&PB, would further a released offender's orderly and successful transition to civilian life, or that would better protect the communities into which offenders are released. During supervised release, the NC&PB, at its discretion or upon the request of the supervising USPO, may modify any terms or

conditions of supervision or may terminate supervision entirely. These modifications will be communicated in writing to the offender. If an offender is approved for MSR, the NC&PB will promptly electronically transmit all decisional documents to the MCF.

(1) The terms and conditions of MSR release, as determined by the NC&PB and identified in the MSR supervision plan, will be communicated to the offender using DD Form 2716-1.

(2) If the NC&PB should reject an MSR supervision plan, the plan will be returned promptly to the submitting MCF with an explanation of the plan's deficiency(s) for the offender's expeditious review, revision, and resubmission by the offender through the MCF staff.

b. MCFs. The commanding officer will report unsatisfactory conduct by the offender directly to the President, NC&PB.

8. Termination of MSR

a. By Completion of the Sentence. Supervisees complete and are released from supervision.

b. By Suspension. MSR can be suspended pending actions related to alleged violations. Once due process is completed the MSR status may be reinstated or the offender may be returned to confinement.

c. By Revocation. The NC&PB may revoke MSR if the supervisee's behavior warrants return to confinement. Within 24 hours of the notification of revocation, a parolee who has not been re-confined will return to the MCF from which they were paroled. Transportation costs will be borne by the parolee. Parolees who fail to report within 24 hours become subject to apprehension and prosecution under the UCMJ.

d. By Judicial Action. If the CA's action or Entry of Judgment is set aside or judicial review nullifies the existence of the approved sentence to confinement (or sentence contained in the Entry of Judgment), the basis of MSR is nullified. The OEGCMJ or the NC&PB will notify the offender in writing via the offender's USPO that their supervision is being held in abeyance and that orders will be forthcoming from the proper authorities.

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Transportation costs incident to the parolee's return to duty will be borne by the United States.

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CHAPTER 6
RELEASE POLICY AND PROCEDURES

1. Pre-Release Conditions. Upon receipt of a Certificate of Parole (DD Form 2716-1) and once all pre-release conditions have been completed, the commanding officer will release the offender on the effective date of supervised release (or no later than the offender's MRD for MSR). The general conditions of supervised release will be attached to the parole/MSR certificate. In addition to regular release from confinement procedures, the following conditions must be satisfied prior to an offender's release to supervision:

a. The release plan as approved by the NC&PB must be revalidated. Significant alterations to the original plan require NC&PB and USPO approval prior to release.

b. The commanding officer will provide an explanation of the conditions of supervision to the offender.

c. The offender must provide written acceptance of the supervision agreement. All copies of the supervision agreement will be signed by the offender and witnessed by a non-commissioned or commissioned officer, or civilian employee (GS-12 or above). The agreement will consist of the parole/MSR promulgating letter from the NC&PB, the Certificate of Parole/MSR, including the guidelines and conditions of supervision, and any addenda, if applicable.

d. The completed original Certificate of Parole/MSR and self-executing appellate leave orders must be delivered to the offender.

e. Front and side view identification photographs will be taken of the offender and forwarded to the USPO, along with signed copies of the Certificate of Parole/MSR and supervision agreement.

f. Copies of the Certificate of Parole/MSR and, if appropriate, the supervision agreement will be appropriately distributed.

g. A discharge certificate will be delivered to the offender at the time of release on supervision if appellate review has been completed.

h. Offenders on appellate leave will be instructed that they may apply for an AFIC at the nearest military installation, reserve unit, or recruiting station.

(1) Original service/health records will be forwarded to and maintained by NAMALA. Duplicate copies of the original service/ health records will be provided to the FBOP concurrent with the transfer of the offender from the MCF to the FBOP.

(2) If appellate review has been completed and the punitive discharge/dismissal executed, original service/health records will be maintained at NAMALA until the expiration of supervision, at which time the records will be retired pursuant to service directives.

i. The MCF commander will ensure that the offender has the address of the closest MTF if the offender has not been discharged or dismissed at the time of release on supervision.

j. An FBI Form I-12 (Flash/Cancellation Notice) will be prepared on each offender released to supervision. The form will be annotated to indicate that the NC&PB and the supervising USPO are to be notified of any arrests reported to the FBI. The "Flash" box of the form should be checked and all required information on the form will be provided.

k. The offender will be provided a medical examination as prescribed by BUMED instructions prior to release on appellate leave or supervised release. If a separation-type physical has been accomplished previously, the offender's health record will be reviewed by a medical officer assigned or attached to the medical treatment facility rendering primary medical care to the MCF and the medical officer will accomplish a physical inspection of the offender to assure the absence of communicable disease. Medical officers will advise the commanding officer, in writing, of their findings and recommendations.

l. A urine sample will be collected for each offender prior to release on supervision in accordance with service directives. The sample will be collected as close to the release of an

offender as possible and will be analyzed before the end of the third week of supervision. A positive result will be reported to the President, NC&PB, by the most expeditious means available.

m. The OEGCMJ will be provided with the offender's date of release to supervision, the expiration date of the supervision, and the offender's address.

n. Notify those V/W who requested to be notified on the DD Form 2704.

2. Monitoring Supervisees

a. The NC&PB coordinates with appropriate authorities within the U.S. Probation Services, requests its assistance to investigate release plan programs, and oversees the supervision of offenders on supervised release under the provisions of this instruction.

b. If NC&PB directs the release of an offender on supervised release under the supervision of a probation officer, the supervisee must meet the conditions set forth in the Certificate Supervision as well as any reasonable conditions directed.

c. All communications to the supervisee will be addressed to or through the parole officer supervising the offender, or other designee of the NC&PB.

d. The parole officer may authorize up to 20 days leave for travel outside established supervision limits and within the continental United States. The probation officer may extend or further restrict these limits as required for adjustment and supervision, but must advise the NC&PB of such action. Requests for travel outside United States territory must be submitted to the NC&PB for decision in advance of the proposed travel date.

3. Clemency Consideration While on Supervised Release

a. While on supervised release, offenders are eligible for annual clemency review. The NC&PB will obtain a report of the offender's conduct from the probation officer prior to conducting the annual clemency review. Clemency requests from

offenders on supervision are not required; however, an offender may submit any matters pertinent to a clemency review.

b. The NC&PB will inform the offender, in writing, via the USPO, of the results of the clemency review, indicating the new termination date of supervision in the event the sentence to confinement is reduced.

4. Acceptance of Release Plan. The departure of the offender from the confinement facility to supervision constitutes acceptance of all the terms and conditions of supervised release.

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CHAPTER 7
REVOCATION POLICY AND PROCEDURES

1. Jurisdiction. Supervisees remain under the jurisdiction of the NC&PB, OEGCMJ, and commanding officer at the time the offender was released to supervision, until the expiration of the offender's sentence without credit for GCT, ET, and SAA.

2. Termination or Suspension of Supervised Release

a. Upon receipt of written credible evidence from the probation officer that conditions of supervision have been materially violated by the supervisee, the NC&PB will determine whether supervised release should be terminated or suspended.

b. The President, NC&PB, will promptly notify the supervisee of the alleged violation(s), suspend supervision, and initiate supervised release violation proceedings. If the supervisee is considered a risk to public safety, based upon the preponderance of evidence, the President, NC&PB, will direct the appropriate Service Corrections headquarters to issue a warrant (DD Form 553-1, Parole/(MSR) Violator Wanted by the Armed Forces) and will direct appropriate authorities to execute the warrant. The supervisee will be taken into military custody if the supervisee is not already being held by federal, state, local, or military authorities. A copy of any warrant will be sent to the supervisee's probation officer, OEGCMJ, NAMALA, and the MCF from which the supervisee was released to supervision from and/or was ordered to return upon suspension. The NC&PB will determine if the supervisee should be awarded credit for service of sentence on supervised release. A supervisee whose supervision is revoked will receive credit for time spent on supervised release except as follows:

(1) If the supervisee has been convicted of a new offense committed after being released on supervision, which is punishable by a term of confinement, forfeiture of the time from the date of release to the date of suspension or revocation of that supervision as a result of that new offense may be ordered by the NC&PB, and such forfeited time will not be credited to service of the sentence. An actual term of confinement need not have been imposed for such conviction if the statute under which the supervisee was convicted permits the trial court to impose any term of confinement. If such conviction occurs subsequent

to a supervision violation hearing, the NC&PB may reconsider the forfeiture of time served on parole or other disposition, as appropriate.

(2) If the NC&PB finds that a supervisee intentionally refused or failed to respond to any reasonable request, order, or summons of the NC&PB or any agent thereof, including the assigned USPO, or if the NC&PB finds that the supervisee was not materially in compliance with the conditions of supervised release, the NC&PB may order the forfeiture of time during which the supervisee so refused or failed to respond or comply.

c. Notify those V/Ws who requested to be notified on the DD Form 2704 of the supervisee's status.

3. Preliminary Interview. The NC&PB may order a preliminary interview to determine whether probable cause exists to support a supervision violation occurred.

a. Purpose of the Preliminary Interview. The primary purpose of the preliminary interview is to determine:

(1) Whether or not probable cause exists to believe that the conditions of supervised release have been violated (conviction of a federal, state, or local crime subsequent to release to supervision and for which confinement is authorized punishment will constitute probable cause that the supervisee has violated a condition of supervision).

(2) Whether or not a supervision violation hearing should be conducted.

(3) Whether or not the alleged violator should be confined pending the final decision to revoke or continue supervision.

b. Officer Conducting Preliminary Interview. The preliminary interview will be conducted by the supervisee's USPO. Effort should be made to conduct the preliminary interview as soon as reasonably possible following receipt of the order to suspend supervision. The USPO will:

(1) Advise the supervisee of the violations that have been alleged, the supervisee's rights prior to a preliminary

interview, and the rights during the preliminary process.

(2) Advise the supervisee of his rights to waive (in writing) a preliminary interview and elect a supervision violation hearing.

(3) If the supervisee requests a preliminary interview, advise the supervisee of the time, place, and purpose of the preliminary interview.

c. Postponement. The probation officer conducting the preliminary interview may postpone the interview for up to 30 days if the supervisee requests time to arrange for counsel and/or witnesses to appear at the interview. A request for postponement of a preliminary interview beyond 30 days may only be granted at the discretion of the President, NC&PB.

d. Rights of Supervisee at Preliminary Interview. Supervisee's have the following rights at a preliminary interview:

(1) To appear personally and speak on their own behalf, present letters and documents, and call individuals to testify about relevant information. In all cases, such individuals must be notified and secured by the supervisee at no cost to the government.

(2) To confront and examine persons who have submitted adverse information regarding the conduct and behavior of the supervisee. Witnesses are to be made available for questioning by the supervisee unless it is determined by the probation officer that they would be at risk of harm if their identities were disclosed. The probation officer conducting the preliminary interview can also deny a request to confront and examine witnesses for good cause.

(3) To be represented at the preliminary interview by an attorney or other personal representative at no expense to the government. When requested by a supervisee not represented by a civilian attorney, a military attorney shall be provided; however, the supervisee has no right to a military attorney of their choice.

(4) The role of any representative or attorney is

limited to the examination of witnesses, presentation of evidence, and the offering of a statement on the supervisee's behalf. The supervisee's representative is not permitted to enter objections or challenges, though such objections and challenges may be submitted in writing to the officer conducting the preliminary interview for attachment to the report of the preliminary interview.

(5) A preliminary interview is not required for a supervisee who has absconded or pled guilty and/or has been convicted of a felony by federal, state, or local authorities, unless otherwise directed by the NC&PB. When such a conviction is the basis of the probable cause finding, the USPO will forward to the NC&PB information regarding the offense and conviction including certified copies of the conviction, and recommendations regarding revocation of supervised release.

e. Recommendations. The officer conducting the preliminary interview will make one of the following recommendations:

(1) Probable cause does or does not exist to believe that the supervisee violated the condition(s) of supervised release.

(2) A supervision violation hearing should or should not be held.

(3) The supervisee should or should not be re-confined pending the outcome of the supervision violation hearing.

f. Report of the Officer Conducting the Preliminary Interview. Upon completion of the preliminary interview, the probation officer will prepare a written report, including a written summary of the interview, recommendations, and supporting reasons concerning the revocation of supervised release. The report and recommendations will be forwarded to the President, NC&PB.

g. President, NC&PB, Review. The President, NC&PB, acting for the NC&PB, will review the report and recommendations of the probation officer. If the President finds that probable cause exists, they will direct that a supervision violation hearing be held. If probable cause does not exist, the President will return the supervisee to the supervision of the USPO. The

President will notify the supervisee promptly of the decision regarding probable cause. If the President finds probable cause, the supervisee will be notified of the charge(s) and the evidence relied upon. The President will inform the NC&PB members of any probable cause decision at the next regularly scheduled hearing. Members of the NC&PB may overrule the President's finding by majority vote.

h. Release Notwithstanding Probable Cause. If the NC&PB finds that the supervisee has violated the conditions of supervision, reinstatement to supervision or release pending further proceedings may still be ordered if it is determined that:

(1) Continuation of supervision violation proceedings is not warranted.

(2) Incarceration pending further supervision violation proceedings is not warranted by the alleged frequency or seriousness of such violation(s).

(3) The supervisee is not likely to fail to appear for further proceedings.

(4) The supervisee does not constitute a risk to public safety.

4. Supervision Violation Hearing. The purpose of the supervision violation hearing is to determine whether the supervisee, by a preponderance of evidence, has violated the condition(s) of supervised release, and, if so, whether supervision should be revoked.

a. Unless the supervision violation hearing is waived in writing by the supervisee, the President, NC&PB, will order a hearing and notify the supervisee of the time, date, and location. The location of the hearing will normally be determined as follows:

(1) If the supervisee has not been convicted of a crime while on supervised release and is not in custody, the supervision violation hearing will normally be conducted near the place of the alleged violation. The supervisee may instead request return to an MCF for a hearing.

(2) If the supervisee admits to a violation of the supervision agreement and is not in custody, the NC&PB may direct the supervisee return to a MCF.

(3) If the supervisee is in the custody of federal, state, or local authorities for commission of a crime while on supervised release, the supervision violation hearing may be conducted at the custody location.

(4) Unless the hearing officer determines the witness' testimony is irrelevant, repetitious, or could be presented adequately through another medium, the hearing officer should make reasonable efforts to contact and to have those witnesses requested by the supervisee testify by phone.

b. The President, NC&PB, will appoint a neutral and detached hearing officer to conduct the supervision violation hearing. The hearing officer will be an officer (O-3, or higher) or civilian (GS-11 or higher) assigned to an MCF who is acquainted with the corrections or supervised release programs within the DON.

(1) Exceptions to this rank/grade requirement must be approved in writing by the President, NC&PB.

(2) If the correctional facility is unable to provide a neutral/detached hearing officer, then the Regional Legal Services Office or Marine Corps Legal Services Support Section closest to the correctional facility will provide a Judge Advocate (O-3 or higher) as the hearing officer.

c. The supervisee will be given written notice of the finding of probable cause, the nature of the alleged violation, their rights to a supervision violation hearing, the purpose of a supervision violation hearing, the evidence upon which the supervision violation hearing is based, and the options available to the NC&PB.

d. The supervisee has the following rights at the supervision violation hearing:

(1) The opportunity to review all evidence pertaining to the alleged violation, unless the hearing officer specifically

finds good cause to deny access. The disclosure of the evidence upon which the supervision violation hearing is based must be made at least 10 days prior to the parole violation hearing.

(2) The opportunity to be heard in person. The supervisee may waive a personal appearance at a supervision violation hearing. The supervisee may submit a statement in writing for consideration by the hearing officer notwithstanding the waiver of personal appearance.

(3) The opportunity to confront and to cross-examine adverse witnesses, unless the hearing officer specifically finds good cause to deny confrontation and cross-examination of the witnesses.

(4) The opportunity to present voluntary witnesses and documentary evidence in the supervisee's own behalf. A supervisee's request for witnesses will be made prior to the hearing and will be subject to the approval of the hearing officer. The hearing officer need not delay the supervision violation hearing if a witness requested by the supervisee fails to appear at the hearing. The hearing officer may limit or exclude any irrelevant or repetitious witness. The attendance of witnesses on behalf of the supervisee is voluntary and will be at no expense to the government.

(5) The opportunity to be represented by a personal representative, including civilian counsel provided at the supervisee's own expense or, upon written request of the supervisee, detailed military counsel. The supervisee has no right to a military attorney of the supervisee's choice. Local military counsel, including Reserve Judge Advocates, may represent the alleged supervision violator. Otherwise such counsel will be provided by the Defense Service Office or Marine Corps Legal Services Support Section of the command closest to the MCF or locale where the hearing is scheduled to convene. The role of the supervisee's representative will be limited to the examination of witnesses, presentation of evidence, and the offering of a statement on the supervisee's behalf with regard to whether supervised release should be revoked. During the hearing, the supervisee's representative will not be permitted to enter objections or challenges. Objections or challenges may be submitted in writing to the hearing officer for attachment to the hearing record. The hearing officer may deny, for good

cause, a supervisee's choice of a non-attorney representative.

e. Formal rules of evidence do not apply at the hearing, but the Presiding Officer may limit or include/exclude any statement or documentary evidence that is irrelevant or repetitious. Decisions will be made based upon a preponderance of the evidence.

f. The officer conducting the supervision violation hearing will prepare a summary of proceedings, which will include a summary of the evidence and the justification for the final recommendations.

5. Report of Supervision Violation Hearing Officer. The officer report of proceedings, including a summarized transcript of the hearing and evidence relied upon, and recommendations concerning revocation, will be forwarded to the President, NC&PB. A copy of the report will be provided to the supervisee and the supervisee's personal representative.

6. NC&PB Options. Upon review of the report and recommendation of the officer who conducted the supervision violation hearing, the NC&PB has the following options:

a. Revoke supervision. A supervisee whose supervised release is revoked will receive credit for time spent on supervision except as follows:

(1) If the supervisee has been convicted of a new offense committed after being released on supervision, which is punishable by a term of confinement, the NC&PB may order forfeiture of the time from the date of release from confinement to supervision to the date supervision is suspended. An actual term of confinement need not have been imposed. If a conviction occurs following a supervision violation hearing, the NC&PB may reconsider the forfeiture of time served on supervision or other disposition, as appropriate.

(2) If the NC&PB finds that a supervisee intentionally refused or failed to respond to any reasonable request, order, or summons of the NC&PB or any agent thereof, including the supervisee's USPO, it may order the forfeiture of credit for time served for the amount of time during which the supervisee so refused to respond. The length of time between release on

supervision and the refusal, failure or violation, and the nature and seriousness of the misconduct shall be considered in determining whether a supervisee was ever in material compliance with the supervision conditions.

(3) If the NC&PB finds that a supervisee was not in material compliance with the conditions of supervised release, the NC&PB may order the forfeiture of credit for time served during which the supervisee was in material noncompliance.

b. Reinstate the supervisee to the original supervision status, to include removal of any detainer placed against the supervisee as a result of the alleged violation(s). Reinstatement of supervision following its suspension or following revocation proceedings will, at the discretion of the NC&PB, be made:

(1) Effective the date of the reinstatement decision.

(2) Retroactively effective to any date in the suspension period, provided the NC&PB concludes that the supervisee should be given full or partial confinement credit for the period of suspension. A retroactive effective date will reflect day-for-day credit for that part of the suspension period for which the NC&PB finds confinement credit is justified.

c. Reprimand the supervisee in writing. The written reprimand will be placed in the supervisee's clemency and parole records.

d. Modify the original conditions of supervised release.

e. Revoke supervision solely upon a determination that a supervisee has materially violated a condition of supervision by failure to pay a fine or make restitution, only if it finds one of the following conditions exists:

(1) The supervisee has willfully refused to pay the fine or make restitution when the supervisee has sufficient resources to pay.

(2) The supervisee has failed to make a sufficient bona fide effort to obtain employment, borrow money, or legally

acquire sufficient funds with which to pay the fine or make restitution.

(3) If the supervisee cannot pay the fine or make restitution, despite sufficient bona fide efforts to do so, supervision may be revoked only if no alternative disposition exists that will adequately serve the need for good order and discipline within the naval service and the correctional treatment of the supervisee.

7. NC&PB Decision and Action

a. The decision of the NC&PB is final and not subject to appeal.

b. The fact that a supervisee has neither committed a criminal offense nor been convicted of committing a criminal offense does not prohibit a decision to revoke supervision.

c. The NC&PB will provide the supervisee with a copy of the supervision violation proceedings, including the decision of the NC&PB, and advise the supervisee of their next clemency review eligibility date, and the commanding officer of the MCF will ensure V/Ws are informed, as required by references (f) and (n). If supervision is revoked, the notice will state the reasons for revocation and advise the supervisee of their supervised release eligibility date.

d. Upon the NC&PB's decision to revoke supervision, the NC&PB will initiate action to have the supervisee returned to military custody, if the supervisee is not already in such custody.

(1) If supervision is revoked and the supervisee is confined in a civilian institution, the NC&PB will request a detainer be lodged with civil authorities.

(2) If supervision has been revoked and the supervisee is not confined in a civilian institution, the NC&PB will initiate action with NAVPERSCOM (PERS-00D) or CMC (PSL), as appropriate, to have the supervisee returned to the MCF from which the supervisee was released or such other MCF as determined by the NC&PB and NAVPERSCOM (PERS-00D) or CMC (PSL), as appropriate.

e. Upon the decision to reinstate supervision, the NC&PB will notify the proper authorities. The President, NC&PB, will execute a new Certificate of Supervision indicating reinstatement on supervised release with the new adjusted Maximum Release Date (MXRD) if the supervisee's adjusted MXRD was adjusted because it did not give the supervisee full credit for time served for the period of suspension while awaiting the supervision violation hearing.

8. Other Actions Relating to Continuation of Supervision Status

a. Original personnel records (service/health records) and allied papers of supervisees re-confined in MCFs following revocation of supervision will be transferred from NAMALA to the pertinent confining MCF. Duplicate copies of personnel records (service/health records) and allied papers of supervisees who are re-confined will be maintained at NAMALA.

b. Original personnel records (service/health records) and allied papers of supervisees whose whereabouts remain unknown for 90 days after suspension of supervised release or supervisees who abscond will continue to be maintained at NAMALA.

c. Original personnel records (service/health records) and allied papers of supervisees re-confined in FBOP facilities following revocation of supervision will be transferred from NAMALA to the pertinent confining FBOP facility. Duplicate copies of personnel records (service/health records) and allied papers of supervisees who are re-confined will be retained by NAMALA.

d. A supervisee at large, whose supervision has been terminated or whose supervised release has been suspended or revoked (except those suspended without direction to take the supervisee into custody), will be considered the same as an escaped military offender whose return to military control is desired. Regulations pertaining to apprehension and return to military control of escaped military offenders will apply. A Flash/Cancellation Notice will be filed with the FBI (FBI Form I-12).

e. In the absence of substantial mitigating circumstances,

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the unexpired term of confinement of a supervisee convicted of a new offense subsequent to release on supervision will run consecutively to any term of confinement imposed for the new offense.

f. Upon notification an offender transferred to the FBOP and placed on supervised release by the USPC has absconded on supervision, the NC&PB will ensure NAVPERSCOM (PERS-00D) or CMC (PSL) are informed.

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APPENDIX A
FORMS

The below forms are required for clemency, parole, and Mandatory Supervised Release review.

1. DD Form 2715 (Mar-13), Clemency and Parole Submission.
2. DD Form 2715-1 (Mar-13), Disposition Board Recommendation.
3. DD Form 2715-2 (Mar-13), Prisoner Summary Data.
4. DD Form 2715-3 (Mar-13), Prisoner Restoration/Return to Duty Clemency, and Parole Statement.
5. DD Form 2716 (1-5 pg) (Mar-13), Prisoner Background Summary.
6. DD Form 2710-1 (Mar-13), Prisoner Sentence Computation.
7. DD Form 2716-1 (Mar-13), Certificate of Supervised Release.
8. DD Form 2716 (Mar-13), Parole Acknowledgement Letter.
9. FBI I-12 (Rev. 09-08-15), Flash/Cancellation Notice.

APPENDIX B
DEFINITIONS

1. Clemency. A general term for the administrative review or action, other than the correction of legal error, which results in mitigation, remission, or suspension of the whole or any part of the unexecuted portion of a court-martial sentence, restoration to duty, the voluntary retention on active duty beyond the obligated term of enlistment, or reenlistment. Clemency also includes substitution for good cause of an administrative discharge for an executed punitive discharge or dismissal in select cases. The naval clemency system, as governed by this instruction, is independent of any clemency review conducted by the court-martial convening authority, the officer exercising general court-martial jurisdiction over the offender, or higher officials acting pursuant to their authority under Article 74(a), UCMJ.

2. Clemency Review Eligibility Date. The date an offender is first eligible for clemency review by the NC&PB.

3. Commanding Officer. Generally, the officer in command of the military activity on whose rolls the offender is assigned at the time the offender's case is eligible for review by the NC&PB. In the case of personnel serving sentences to confinement in MCFs, the commanding officer considered an element of the clemency and parole review systems is the officer directly in charge of the brig. For the purposes of this instruction, the term "commanding officer" includes commanding officers and officers in charge of MCFs; the Commandant, U.S. Disciplinary Barracks (USDB), Fort Leavenworth, Kansas; and any other officer who commands a correctional/confinement facility under the control of the armed services.

4. Convening Authority (CA). The officer acting under Articles 22 and 23, UCMJ, SECNAV (e.g., JAGMAN) or empowered by the President who refers charges to trial by courts-martial.

5. Disposition Board. Correctional staff members selected by the commanding officer of a MCF to review and forward to the NC&PB recommendations via the commanding officer concerning clemency and supervised release requests of all naval offenders assigned to the MCF.

6. Director, Secretary of the Navy Council of Review Boards (SECNAVCORB). The official overseeing and administering for SECNAV the clemency and parole systems under reference (i).
7. Federal Bureau of Prisons (FBOP). A federal system of confinement facilities to which selected court-martialed offenders are transferred from MCFs for completion of service of their sentences to confinement imposed as a result of conviction by courts-martial.
8. Mandatory Clemency Review. Unless waived in writing by the offender, the NC&PB must conduct a clemency review of all cases (except those involving the death penalty) involving offenders whose approved court-martial sentences (or sentences contained in Entries of Judgment for sentences adjudged on or after 1 January 2019) include 12 months or more confinement.
9. Mandatory Supervised Release (MSR). A form of conditional release granted to qualifying individuals who have served that portion of their sentence to confinement up to their minimum release date (MRD). This form of release is served until the adjusted maximum release date (MXRD) unless otherwise revoked or remitted by the NC&PB.
10. Mitigation. Action taken to lessen the severity of the punishment in quantity or quality, or both, imposed by an approved court-martial sentence (or sentence contained in Entry of Judgment for sentences adjudged on or after 1 January 2019).
11. Military Confinement Facility (MCF). A military confinement facility within the meaning of 10 U.S.C. §951 used by the naval (Navy and Marine Corps) service for the confinement of offenders serving court-martial sentences. For purposes of this instruction, the USDB, Fort Leavenworth, Kansas, and any other correctional/confinement facility under the control of the armed services are included in the term MCF.
12. Naval Clemency and Parole Board (NC&PB). A board comprised of a Presiding Officer and representatives from the CMC, Bureau of Naval Personnel (BUPERS), Bureau of Medicine (BUMED (a psychiatrist or clinical psychologist), and a representative from the Office of the Judge Advocate General (Navy or Marine). Board members are administratively constituted by SECNAV to take certain departmental-level actions in cases of offenders

eligible for clemency, parole, and MSR.

13. Offender. A member of the Marine Corps, Navy, or Coast Guard who has been convicted by special or general court-martial and has an approved sentence (or a sentence contained in an Entry of Judgment for sentences adjudged on or after 1 January 2019 in accordance with the Military Justice Act of 2016).

14. Officer Exercising General Court-Martial Jurisdiction (OEGCMJ). Any person authorized by Article 22a, UCMJ, SECNAV (e.g., JAGMAN) or empowered by the President to convene general courts-martial.

15. Parole. A conditional release from confinement in a MCF for an eligible offender after service of at least one-third of the approved sentence to confinement (or sentence to confinement contained in Entry of Judgment for sentences adjudged on or after 1 January 2019), but not less than six months. Parole is granted for the purpose of assisting the selected offender, under the guidance and supervision of a U.S. Probation Officer (USPO), to make a successful transition from the controlled living environment in confinement to a normal life in the civilian community.

16. Parole Eligibility Date. The date an offender serving the confinement portion of an approved sentence (or sentence contained in an Entry of Judgment for sentences adjudged on or after 1 January 2019) is eligible for parole.

17. Parole Review Hearing. A hearing conducted by the NC&PB to review parole requests, determine whether to grant or deny parole, set conditions of parole if parole is granted, and make parole recommendations to the SECNAV in those cases not within the final decision-making authority of NC&PB.

18. Post-Trial Progress Report. All favorable or unfavorable information, evaluations, and recommendations contained in the file of an offender who has a sentence adjudged by court-martial and approved by the CA (or the sentence contained in Entry of Judgment for sentences on or after 1 January 2019) that documents the offender's attitude, conduct, and performance since being convicted and upon which a decision regarding clemency, parole, and MSR may be based.

19. Preliminary Interview. The President, NC&PB, may determine that a proceeding generally conducted by a USPO other than the offender's USPO to determine whether probable cause exists to believe that the offender has materially violated a condition of supervised release and to provide a basis upon which to recommend to NC&PB whether a supervision violation hearing should be ordered.

20. Prison Wardens. Federal officials having cognizance over naval offenders who are serving court-martial sentences in facilities administered by the FBOP.

21. Punitive Separation. A dismissal, dishonorable discharge, or bad conduct discharge adjudged as a sentence by a court-martial and approved by a CA. (In accordance with the Military Justice Act of 2016, on 1 January 2019, CAs are no longer required to approve punitive separations).

22. Remission. The diminution, abatement, or forgiveness, in whole or in part, of any part of the unexecuted or executed portion of an approved court-martial sentence (or sentence contained in Entry of Judgment for sentences on or after 1 January 2019).

23. Requested Clemency Review. A written statement or signed DD Form 2715-3 (Mar 13), or equivalent, whereby an offender whose approved sentence (or sentence contained in an Entry of Judgment on or after 1 January 2019), includes an unsuspended punitive separation and less than 12 months confinement, requests clemency from the NC&PB.

24. Restoration. Action by which the approved punitive separation (or punitive separation contained in the Entry of Judgment in cases adjudged on or after 1 January 2019) of selected offenders who request restoration is remitted or suspended for a definite period of time so that they may demonstrate by conduct and performance during a period of duty that they deserve to have the suspended punitive separation remitted.

25. Retention. A clemency action by which selected offenders, who are beyond the expiration of their normal service obligation, are offered the opportunity to serve voluntarily a period of active duty beyond the expiration of their active

service obligation on probation with a view to honorable restoration to duty.

26. Supervised Release. Meaning both parole and MSR.

27. Supervisee. An offender who has been released on either parole or MSR.

28. Supervision Violation Hearing. A hearing to determine whether the supervisee has materially violated the conditions of release and, if so, whether supervised release should be revoked or reinstated.

29. Suspension. The temporary discontinuance, in whole or in part, of the service of the unexecuted portion of an approved court-martial sentence (or sentence contained in the Entry of Judgment for sentences adjudged on or after 1 January 2019).

30. U.S. Parole Commission. An independent agency of the Department of Justice with authority to promulgate rules and regulations establishing guidelines for making decisions to grant or deny parole to federal offenders.

31. U.S. Probation Officer (USPO). Federal official of the Probation Division, Administrative Office of the United States Courts, having immediate supervisory cognizance over an offender paroled or placed on MSR from a MCF or federal correctional facility.

32. Victim. A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the term includes one of the following, in order of precedence: a spouse, legal guardian, parent, child, sibling, or another family member.

33. Waiver of Clemency Review. A statement or DD Form 2715-3 (Mar 13), or equivalent, reflecting a voluntary, knowing, and intelligent decision, signed by offenders and witnessed by the appropriate personnel per paragraph 5a(3) of Chapter 3.

APPENDIX C
MEMBER OATH/AFFIRMATION

Prior to assuming their duties as members of the NC&PB, each individual will execute the following oath or affirmation administered by the President or Presiding Officer, NC&PB, which continues in effect throughout their service with the NC&PB:

I, _____, do swear or affirm that I will faithfully and impartially perform all the duties incumbent upon me as a member of the Naval Clemency and Parole Board; that I will fully and objectively inquire into and examine all cases coming before me; that I will, without regard to the status of the individual in any case, render my individual judgment according to the facts, my conscience, and the law and regulations applicable to the Naval Clemency and Parole Board.

APPENDIX D
MSR ACKNOWLEDGEMENT TEMPLATE

Subj: ACKNOWLEDGEMENT OF MANDATORY SUPERVISED RELEASE BRIEFING

1. In accordance with DoD Instruction 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority: If you are not approved for or you have not accepted parole, you may be reviewed by your Service Clemency and Parole Board (C&PB) for release at your Minimum Release Date (MRD) under Mandatory Supervised Release (MSR). MSR is similar to parole. Prisoners released on MSR through Good Conduct Time (GCT) and abatement credits are subject to supervision by a U.S. Probation Officer up to the full-term of the sentence imposed. Military prisoners transferred from a DoD correctional facility to the Federal Bureau of Prisons fall exclusively under the U.S. Parole Commission for parole and MSR.

2. If placed on MSR, you will be under the supervision of a U.S. Probation Officer with specific release conditions. You will remain on supervised release provided you comply with conditions of release. You will continue to be entitled to an annual clemency review by your Service C&PB. The Service C&PB may, at its discretion or upon request of the supervising probation officer, modify any terms or conditions of supervision or may terminate supervision entirely. Violations of MSR conditions may lead to revocation of MSR and possible return to confinement.

3. You are required to complete a release plan. Information required to complete your MSR plan includes where and with whom you will live with and, except in the case being medically disabled, either guaranteed employment, an offer of effective assistance to obtain employment, or acceptance in a valid educational or vocational program. Obtaining this information and documents in a timely manner will assist in your transition to MSR. These documents can be sent directly to a correctional facility or can be sent to you and then delivered to the facility staff. They do not have to be notarized or in a special format. Good Conduct Time (GCT), Earned Time (ET), or Special Acts Abatement (SAA) earned but held in abeyance will be awarded upon approval of an acceptable MSR plan. Failure to prepare an acceptable MSR plan may result in no award of GCT, ET, and SAA or for those inmates with vested abatement, forfeiture of abatement through a Discipline and Adjustment board process.

Upon release on MSR all GCT, ET & SAA will be waived.

4. It is to your advantage to prepare yourself for release through good behavior, program participation, preparation of a viable release plan, and acceptance of parole, if offered. In either parole or MSR, you will be under some sort of supervision upon release. Parole will be an earlier release from confinement than MSR.

5. I, _____, have been briefed and provided a copy of this document concerning MSR.

Prisoner signature: _____

Date: _____

Briefed and served by: _____

Date: _____

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